Hearing Date and Time: July 30, 2013 at 10:00 a.m.
Objection Deadline: July 26, 2013 at 12:00 p.m.

Richard M. Cieri
Ray C. Schrock
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Counsel for Ally Financial Inc. and Ally Bank

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
RESIDENTIAL CAPITAL, LLC, et al.	)	Case No. 12-12020 (MG)
Debtors.	)	Jointly Administered

ALLY FINANCIAL INC.'S OBJECTION TO THE AD HOC GROUP OF JUNIOR SECURED NOTEHOLDERS' MOTION FOR ENTRY OF AN ORDER (I) DIRECTING EACH OF DEBTORS' COUNSEL, INCLUDING MORRISON & FOERSTER LLP, OFFICIAL COMMITTEE COUNSEL, INCLUDING KRAMER LEVIN NAFTALIS & FRANKEL LLP, AND THE DEBTORS' MANAGEMENT TO REMAIN STRICTLY NEUTRAL IN ANY DISPUTE REGARDING CLAIMS BY AND BETWEEN ANY DEBTORS, (II) ORDERING THE LIMITED DISQUALIFICATION OF EACH OF THE FOREGOING TO THE EXTENT NECESSARY TO EFFECTUATE THE FOREGOING, AND (III) GRANTING RELATED RELIED

TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

Ally Financial Inc. on behalf of itself and its non-debtor subsidiaries, including Ally Bank, (collectively, "***Ally***") files this objection (the "***Objection***") to the *Motion of the Ad Hoc Group of Junior Secured Noteholders for Entry of an Order (i) Directing Each of the Debtors' Counsel, Including Morrison & Foerster LLP, Official Committee Counsel, Including Kramer Levin Naftalis & Frankel LLP, and the Debtors' Management to Remain Strictly Neutral in any*

Dispute Regarding Claims By and Between any Debtors, (ii) Ordering the Limited Disqualification of Each of the Foregoing to the Extent Necessary to Effectuate the Foregoing, and (iii) Granting Related Relief [ECF No. 4289] (the "***DQ Motion***").[1]

PRELIMINARY STATEMENT[2]

1. The DQ Motion is a transparent attempt by the Ad Hoc Group of Junior Secured Noteholders (the "***Ad Hoc Group***") to gain a perceived strategic and tactical advantage to collaterally attack a chapter 11 plan [ECF No. 4153] (the "***Plan***") rather than object to the Plan on the merits. Notably, the Ad Hoc Group is taking this action despite the fact that the Plan contemplates that the Ad Hoc Group will be paid in full on the effective date of the Plan, including accrued prepetition interest plus any postpetition interest to which the Court determines the Ad Hoc Group are entitled.[3] There is little doubt that the DQ Motion was filed to attempt to maximize negotiation leverage by making the dispute with the Debtors with respect to the Ad Hoc Group's entitlement to postpetition interest as expensive and disruptive as possible. Moreover, the DQ Motion, if granted, would bring the Debtors' chapter 11 cases to a halt and destroy the settlement embodied in the Plan.

2. Ally now files this Objection to address the central arguments asserted in the DQ Motion. *First*, the DQ Motion is not timely. After signing a plan support agreement prepetition under which they received similar treatment, more than a year after the Debtors' counsel retained under section 327(a) of the Bankruptcy Code ("***Debtors' Counsel***") and counsel to the Committee ("***Committee's Counsel***") were retained, and after this Court approved the Plan

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1 Capitalized terms used but not defined herein have the meanings ascribed to such terms in the DQ Motion.

2 Ally joins in the arguments set forth in the objections to the DQ Motion filed by the Debtors and the statutory committee of unsecured creditors (the "***Committee***"), filed substantially contemporaneously with this Objection.

3 *See* Plan, Art. III.D.

Support Agreement (the "***PSA***"), rather than challenge the Plan on the merits, the Ad Hoc Group has chosen to challenge the Debtors' Counsel's and the Committee's Counsel's roles as fiduciaries of the Debtors' estates for tactical reasons. *Second*, the assertion that a conflict exists with respect to the actions of Debtors' Counsel, Committee's Counsel, or Mr. Kruger, as CRO of all the Debtors, is incorrect, dependent on matter-of-fact statements, and unsupported by any evidence. *Third*, even if a conflict is found to exist despite the lack of evidence, it fails rise to the level necessary for disqualification.

ARGUMENT

I. The DQ Motion Is Not Timely.

3. The Ad Hoc Group has been aware of the Intercompany Claims for over a year—the decision to pursue disqualification now is untimely and indicates that the DQ Motion was filed for tactical reasons. *See Lamborn v. Dittmer*, 873 F. 2d 552 (2d Cir. 1989) ("[C]ourts must guard against tactical use of motions to disqualify counsel …") (internal citations omitted); *In re Wingspread Corp.*, 152 B.R. 861, 863 (Bankr. S.D.N.Y. 1993) ("Motions to disqualify attorneys are general disfavored and are subject to fairly strict scrutiny to ensure that they are not being interposed for merely tactical reasons."). The retention applications for counsel to the Debtors and the Committee were approved approximately one year ago.[4] Further, each Debtor filed its Statement of Assets and Liabilities listing, among other things, all of its Intercompany Claims, on June 30, 2012.[5] The Ad Hoc Group also signed a plan support agreement prepetition and was aware of and had their counsel participate in the five-month mediation that ultimately culminated

[4] *See Order Authorizing the Retention and Employment of Morrison & Foerster LLP as Bankruptcy Counsel to the Debtors* Nunc Pro Tunc *to the Petition Date* [ECF No. 786]; *Order Approving Retention of Kramer Levin Naftalis & Frankel LLP as Counsel to the Official Committee of Unsecured Creditors*, Nunc Pro Tunc *to May 16, 2012* [ECF No. 777]

[5] *See* DQ Motion, ¶ 1.

in the PSA.[6] The record closed on the retention of Debtors' Counsel and Committee's Counsel more than a year ago when these parties were retained and the Ad Hoc Group did not lodge an objection.[7] The Ad Hoc Group chose not to argue that the Intercompany Claims create a conflict of interest such that Debtors' Counsel, Committee's Counsel, and the Debtors' management, including Mr. Kruger, should be disqualified from participating in negotiations and litigation surrounding such claims until the eve of trial on the status of the Ad Hoc Group's claims. *See In re WorldCom, Inc.*, 311 B.R. 151, 168 (Bankr. S.D.N.Y. 2004) (denying a motion to disqualify based on facts known to the movant for more than ten months finding the delay in filing the motion was "potentially disruptive to the Debtors' reorganization [and] the interests of all creditors in these chapter 11 cases would have been hindered by the disqualification, as emergence could have been delayed without any foreseeable benefit to the Debtors' estates."); *In re O.P.M. Leasing Serv., Inc.*, 16 B.R. 932 (Bankr. S.D.N.Y. 1982) (rejecting a motion to disqualify trustee of consolidated bankruptcy cases despite existence of an interdebtor claim where motion to remove was a litigation tactic and disclosure of potential conflicts had been made at the time of appointment without objection). This timing is not coincidental—the DQ Motion was filed for impermissible tactical purposes more than a year after Debtors' Counsel and Committee's Counsel were retained by a final order of this Court.

II. No Conflict of Interest Exists.

4. The Ad Hoc Group has failed to demonstrate that a conflict of interest exists. The only indicia of a conflict the Ad Hoc Group can muster is the existence of Intercompany Claims

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[6] *See Plan Support Agreement* [ECF No. 6, Ex. 9]; *Order Appointing a Mediator* [ECF No. 2519].

[7] *See* Transcript of Record at 13-16, 39-40, *In re Residential Capital LLC, et al.*, No. 12-12020 (July 13, 2012) attached hereto as Exhibit 1.

and the proposed treatment of such claims in the Plan.[8] The Ad Hoc Group ignores that Debtors' Counsel, Committee's Counsel, and Mr. Kruger, on behalf of their respective clients, exercised their fiduciary duties and engaged in extensive arm's-length negotiations and mediation with other parties in interest, including Ally, under the guidance of a sitting United States Bankruptcy Judge that resulted in a global settlement with the Debtors' largest creditors that, among other things, resolves all Inter-Debtor Disputes, including the treatment of Intercompany Claims and provides for the payment in full of the Ad Hoc Group.[9] Such actions are hardly indicative of a conflict, rather, they suggest that Debtors' Counsel, Committee's Counsel, and Mr. Kruger performed the very tasks their respective retentions anticipated by aligning the interests of all the Debtors pursuant to the PSA. Indeed, this Court found that the Debtors' entry into the PSA, which contractually binds each of the Debtors to support confirmation of the Plan, including the treatment of Intercompany Claims contained therein, was in the best interests of the Debtors' estates.[10] The PSA exemplifies the good faith resolution of Intercompany Claims to maximize value for the estates in this Court's mediation process and the Debtors have a unity of purpose to

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[8] Ally's counsel, Kirkland & Ellis LLP ("***K&E***"), has been retained as debtor's counsel under section 327(a) of the Bankruptcy Code in numerous cases and has settled intercompany claims in such cases without disqualification. For example, in *Charter*, while certain noteholders threatened to file motions seeking disqualification of counsel as a result of intercompany claims, the issue of the treatment of such intercompany claims was ultimately litigated in connection with confirmation of a chapter 11 plan without the disqualification of counsel. *See JPMorgan Chase Bank, N.A. v. Charter Commc'ns Op., LLC (In re Charter Commc'ns)*, 419 B.R. 221 (Bankr. S.D.N.Y. 2009) (confirming a chapter 11 plan over arguments that the treatment of intercompany claims violated the debtors' fiduciary duties).

[9] *See [Proposed] Disclosure Statement for the Joint Chapter 11 Plan of Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [ECF No. 4157], 34-36; *see also* Letter from Gary S. Lee, Partner, Morrison & Foerster LLP, to the Honorable Martin Glenn, United States Bankruptcy Judge (July 2, 2013) [ECF No. 4290, Ex. C] ("The decision to settle the intercompany claims in the context of a Plan resulted from a deep, considered analysis conducted by a variety of parties, including the Debtors' CRO, the Debtors' counsel, the Debtors' financial advisors, the Committee's counsel, the Committee's financial advisor, and a myriad of other business professionals and their respective advisors. The decision, moreover, was undertaken under the purview of a mediation conducted by a sitting United States Bankruptcy Court Judge.").

[10] *See Order Granting the Debtors' Motion for an Order Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing the Debtors to Enter into a PSA with Ally Financial Inc., the Creditors' Committee, and Certain Consenting Claimants* [ECF No. 4098] ("The [PSA] . . . is in the best interest of the Debtors' estates").

prosecute the PSA to maximize the value of the estates. *See In re O.P.M. Leasing Servs., Inc.*, 16 B.R. at 941 (holding where a "unity of interest" exists between debtor estates that share a "common goal . . . there is no impropriety in the same attorney representing multiple related debtors."). If the Ad Hoc Group has concerns regarding the process leading to the Plan, those issues, to the extent not precluded by this Court's order approving the PSA, should be heard in the context of the confirmation hearing.

5. Moreover, Mr. Kruger was retained, in part, to address any concerns that the Debtors' senior officers' and management personnel's historical experience with the Debtors' business would be an impediment to tackling matters such as the treatment of Intercompany Claims.[11] The implication of the DQ Motion is that Mr. Kruger, as the CRO with acknowledged fiduciary obligations to all of the Debtors, while engaged in a court-supervised mediation with the Honorable James M. Peck, is not permitted to determine that the Plan, which embodies a settlement of, among other things, Intercompany Claims, is in the best interest of all of the Debtors and each Debtor's separate estate and is the appropriate resolution of such Intercompany Claims—a result that contradicts a key purpose of Mr. Kruger's retention.

III. Disqualification of Debtors' Counsel, Committee's Counsel, and the Debtors' Management Is Unwarranted.

6. Even if this Court were to determine that a conflict of interest exists, the Ad Hoc Group has not met the "heavy burden" and "high standard of proof" required for a party seeking disqualification. *In re Caldor, Inc.-NY*, 193 B.R. 165, 178 (Bankr. S.D.N.Y. 1996); *see also In re Cleveland Trinidad Paving Co.*, 218 B.R. 385, 388 (Bankr. N.D. Ohio 1998) ("The burden of proof is on the movant . . . as the party in interest who seeks disqualification of a professional

[11] *See Debtors' Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code for an Order Authorizing the Debtors to Appoint Lewis Kruger as Chief Restructuring Officer* [ECF No. 2887], ¶ 23.

appointed under §327(a). That burden must be borne by a preponderance of the evidence to show that the standards of § 327(a) and [Bankruptcy] Rule 2014 have been compromised."). Because motions to disqualify counsel are drastic measures that can result in denying a client representation of the attorney of their choice, motions to disqualify are generally disfavored and are subject to "fairly strict scrutiny." *In re Wingspread Corp.*, 152 B.R. 861, 863 (Bankr. S.D.N.Y. 1993); *In re Allboro Waterproofing Corp. v. Allboro Bldg. Maint. (In re Allboro Waterproofing Corp.)*, 224 B.R. 286, 290 (Bankr. E.D.N.Y. 1998).

7. As evidence that a conflict of interest exists, the Ad Hoc Group merely points to the existence of Intercompany Claims and the proposed treatment of such claims in the Plan. However, the "presence of intercompany claims between debtors represented by the same counsel does not automatically warrant the disqualification of that counsel." *In re Adelphia Commc'ns Corp.*, 342 B.R. 122, 128 (S.D.N.Y. 2006). Note, the Ad Hoc Group's position is contrary to practice in most complex chapter 11 cases because in such cases a unity of interest exists between the debtors and the expense of retaining counsel for each debtor would bring the debtors' estates to their knees. *See id.* (finding that requiring the appointment of independent professionals to represent each individual debtor in large bankruptcy cases would burden estates with "unjustified and insurmountable costs."). The implication that the Debtors should be required to retain 51 law firms to serve as conflicts counsel is untenable. The Ad Hoc Group has submitted no evidence beyond the statements in the DQ Motion.

8. Further, the determination of whether an adverse interest exists is a fact-specific inquiry that is best determined on a case-by-case basis. *In re JMK Constr. Group, Ltd.*, 441 B.R. 222, 230 (Bankr. S.D.N.Y. 2010). Because of this, the cases cited by the Ad Hoc Group are easily distinguishable and are thus unpersuasive. For example, in *In re JMK Construction*

Group., Ltd., 441 B.R. 222 (Bankr. S.D.N.Y. 2010), this Court rejected a motion seeking joint retention at an early stage of the case because of potential issues posed by unresolved interdebtor claims. *JMK* dealt with conflicts raised at the time of retention—not conflicts fourteen months into a chapter 11 case—and highlights the Ad Hoc Group's failure to timely raise these issues. Additionally, the decision in *In re Granite Partners, L.P*, 219 B.R. 22 (Bankr. S.D.N.Y. 1998) is distinguishable because that case addressed improper concealment and failure to disclose conflicts.[12] Importantly, no case cited by the Ad Hoc Group addresses the fact that the Debtors have entered into a settlement with a their largest creditors, now embodied in the Plan, that sets forth a consensual resolution of the Intercompany Claims such that there is no current conflict among the Debtors on this issue.[13] The Ad Hoc Group ignores that the Debtors' largest creditors have effectively deemed that conflicts, if any, have been resolved by participating in mediation and subsequently entering into the PSA. In sum, particularly given that the Plan contemplates payment of the Ad Hoc Group in full, disqualification of Debtors' Counsel, Committee's Counsel, and Mr. Kruger is wholly unwarranted.

9. Finally, the practical result of the DQ Motion, if granted, is the effective derailing

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[12] The other cases cited by the Ad Hoc Group are equally unpersuasive. *See In re Interwest Bus. Equp., Inc.*, 23 F.3d 311 (10th Cir. 1994) (affirming bankruptcy court's rejection of multi-debtor representation in connection with a retention application where proposed counsel did not provide adequate information regarding the nature of intercompany claims); *In re Coal River Res., Inc.*, 321 B.R. 184 (W.D. Va. 2005) (affirming rejection of multi-debtor representation in connection with an application to represent four debtors where discrepancies existed with regard to scheduled amounts of intercompany debt); *In re Star Broad., Inc.*, 81 B.R. 835 (Bankr. D.N.J. 1988) (rejecting proposed representation of two debtors where substantial interdebtor claims were asserted and unexplained inconsistencies existed between the debtors' schedules and financial statements); *In re Jennings*, 199 Fed. App'x 845 (11th Cir. 2006) (affirming disqualification of counsel for failure to fully disclose the connections between the firm and its eleven debtor clients); *In re Straughn*, 428 B.R. 618 (Bankr. W.D. Pa. 2010) (rejecting applications for dual representation of closely held corporate debtor and its principal who was liable for debt incurred by the corporate debtor); *In re Shore*, No. 03-43072, 2004 WL 2357992 (Bankr. D. Kan. May 14, 2004) (disqualifying law firm whose retention application failed to disclose relationships with parties economically adverse to the debtor).

[13] *See In re Adelphia Commc'ns Corp.*, 336 B.R. 610 (Bankr. S.D.N.Y. 2006) ("[C]onsensual resolution [of interdebtor issues] is the normal (and preferred) practice.").

or at least wounding of the Debtors' chapter 11 cases and prosecution of the Plan during the Debtors' exclusive periods. Pursuant to this Court's instruction, the proper time to hear issues related to the 9019 settlements in the Plan, including the valuation of Intercompany Claims, is in connection with confirmation of the Plan.[14] Should the Ad Hoc Group or any creditor of the Debtors have concerns about the treatment of Intercompany Claims, they will have an opportunity to raise objections and receive an impartial ruling on the treatment of Intercompany Claims in connection with Plan confirmation.

[*Remainder of page intentionally left blank.*]

[14] *See* Transcript of Record at 17, *In re Residential Capital LLC, et al.*, No. 12-12020 (July 3, 2013) ("[I]f [the Ad Hoc Group] oppose[s] plan confirmation, and if they oppose the global settlement with respect to intercompany claims, I'm going to have to hear the evidence and decide it as part of plan confirmation . . . .") attached hereto as Exhibit 2.

For the foregoing reasons, Ally respectfully requests that this Court deny the DQ Motion.

New York, New York
Dated: July 26, 2013

/s/ Ray C. Schrock

Richard M. Cieri
Ray C. Schrock
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Counsel for Ally Financial Inc. and Ally Bank

EXHIBIT 1

Transcript of Record at 13-16, 39-40, *In re Residential Capital LLC, et al.*, No. 12-12020 (July 13, 2012)

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, ET AL.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 13, 2012

10:05 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(Doc# 90, 47) Status Conference RE: Motion Authorizing The Debtors To Continue To Perform Under The Ally Bank Servicing Agreements In The Ordinary Course Of Business.

(CC: Doc no. 509) Debtors' Application Under Section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 for Authorization to Employ and Retain Dorsey & Whitney LLP as Special Securitization and Investigatory Counsel to the Debtors, Nunc Pro Tunc to May 14, 2012 filed by Larren M. Nashelsky on behalf of Residential Capital, LLC..

(CC: Doc no. 512) Debtors' Application for Order Authorizing the Employment and Retention of Rubenstein Associates, Inc. as Corporate Communications Consultant to the Debtors Nunc Pro Tunc to the Petition Date.

(CC: Doc no. 511) Debtors' Application for an Order Authorizing Employment and Retention of Mercer (US) Inc. as Compensation Consultant to the Debtors Nunc Pro Tunc to the Petition Date filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc no. 508) Debtors' Application Under Section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 for Authorization to Employ and Retain Carpenter Lipps & Leland LLP as Special Litigation Counsel to the Debtors, Nunc Pro Tunc to May 14, 2012 filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc no. 510) Debtors' Application Under Section 327(e) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1 for Authorization to Employ and Retain Orrick, Herrington & Sutcliffe LLP as Special Securitization Transactional and Litigation Counsel to the Debtors, Nunc Pro Tunc to May 14, 2012 filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc no. 506) Debtors' Application Pursuant to Section 327(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016 and Local Rules 2014-1 and 2016-1, for Entry of an Order Authorizing the Retention and Employment of Morrison & Foerster LLP as Bankruptcy Counsel to the Debtors Nunc Pro Tunc to the Petition Date filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc no. 528) Application Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014 for an Order to Retain and Employ Kramer Levin Naftalis & Frankel LLP as Counsel to the Official Committee of Unsecured Creditors of the Debtors, Nunc Pro Tunc, to May 16, 2012 filed by Kenneth H. Eckstein on behalf of Official Committee Of Unsecured Creditors.

(Doc no. 527) Debtors' Application for Order Under Bankruptcy Code Sections 327(a) and 328(a), Bankruptcy Rule 2014(a) and Local Rule 2014-1 Authorizing the Employment and Retention of Curtis, Mallet-Prevost, Colt & Mosle LLP as Conflicts Counsel Nunc Pro Tunc to the Petition Date filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

(CC: Doc# 513) Debtors Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals.

(CC: Doc# 514) Debtors Motion for Order Under Bankruptcy Code Sections 105(a), 327 and 330 and Bankruptcy Rule 2014 Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date.

Doc# 531 Debtors' Application Pursuant to 11 U.S.C. Section 327(a) and Fed. R. Bankr. P. 2014 for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Agent Nunc Pro Tunc to the Petition Date filed by Larren M. Nashelsky on behalf of Residential Capital, LLC.

Transcribed by: Penina Wolicki

eScribers, LLC

700 West 192nd Street, Suite #607

New York, NY 10040

(973)406-2250

operations@escribers.net

A P P E A R A N C E S :

MORRISON & FOERSTER, LLP
Attorneys for Debtors
1290 Avenue of the Americas
New York, NY 10104

BY: LORENZO MARINUZZI, ESQ.
GARY S. LEE, ESQ.

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP
Conflicts Counsel for Debtors
101 Park Avenue
New York, NY 10178

BY: MICHAEL A. COHEN, ESQ.
STEVEN J. REISMAN, ESQ.

U.S. DEPARTMENT OF JUSTICE
Office of the U.S. Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BY: BRIAN S. MASUMOTO, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for Official Creditors' Committee
1177 Avenue of THE Americas
New York, NY 10036

BY: KENNETH H. ECKSTEIN, ESQ.
DOUGLAS MANNAL, ESQ.
RACHAEL L. RINGER, ESQ.
P. BRADLEY O'NEILL, ESQ.

KIRKLAND & ELLIS LLP
Attorneys for Ally Financial Inc. and Ally Bank
601 Lexington Avenue
New York, NY 10022

BY: CRAIG A. BRUENS, ESQ.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Attorneys for Barclays Bank PLC
Four Times Square
New York, NY 10036

BY: JONATHAN H. HOFER, ESQ.

SIDLEY AUSTIN
Attorneys for Nationstar Mortgage
One South Dearborn
Chicago, IL 60603

BY: JESSICA BOELTER, ESQ. (TELEPHONICALLY)
LARRY NYHAN, ESQ. (TELEPHONICALLY)

FREEBORN & PETERS LLP
Attorneys for Mercer
311 South Wacker Drive
Suite 3000
Chicago, IL 60606

BY: DEVON J. EGGERT, ESQ. (TELEPHONICALLY)

DORSEY & WHITNEY LLP
Proposed Investigatory Counsel to Debtors
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402

BY: THOMAS O. KELLY, III, ESQ.

ALSO PRESENT:
CORLA JACKSON, Pro Se
JOHN DEMPSEY, Mercer (TELEPHONICALLY)
ALAN TESSLER, Rubenstein & Associates (TELEPHONICALLY)

P R O C E E D I N G S

THE COURT: Please be seated. We're here in Residential Capital, LLC, number 12-12020. Mr. Marinuzzi?

MR. MARINUZZI: Good morning, Your Honor. For the record, Lorenzo Marinuzzi, Morrison & Foerster, proposed bankruptcy counsel for the debtors.

Your Honor, first of all, thank you for making yourself and your staff available this morning for a hearing. And I promise to do my best to move as quickly as possible.

Your Honor, we're here on a number of mostly uncontested retention applications filed by the debtors and one filed by the committee, as well as a status conference on the subservicing matter. And if I proceed in the order in which matters are listed in the agenda, Your Honor, you'll note that the retention applications filed by the committee and the debtors for the financial advisors FTI and Centerview, Moelis and AlixPartners, have been adjourned to the hearing on the 24th. And Your Honor, if it's okay, we'll skip the status conference and deal with the retentions, so the professionals that are here can leave.

Your Honor under uncontested matters is the motion to approve interim compensation and reimbursement of expenses. There were changes requested by the committee, which we've incorporated into the order. I believe chambers has seen a copy of the marked order, but I’m happy to walk through the

changes if Your Honor would like.

THE COURT: No, that is okay. Let me ask, does anybody else wish to be heard with respect to the interim compensation order.

All right. It's approved.

MR. MARINUZZI: Thank you, Your Honor. The next item on the agenda is the debtors' application to retain under 327(a) Kurtzman Carson Consultants, as administrative agents, nunc pro tunc. Your Honor, there was one change requested by the committee to the order. KCC's been retained as the noticing agent, and they have a retainer for expenses, as is provided in the general order. We picked up that retainer concept unintentionally in the order for 327(a), so we just deleted it.

THE COURT: Okay.

MR. MARINUZZI: There were no objections.

THE COURT: Does anybody wish to be heard with respect to the Kurtzman Carson retention?

It's approved.

MR. MARINUZZI: Thank you, Your Honor. The next item is the motion requesting the -- authorizing the preliminary payment of ordinary-course professionals. Your Honor, there was an objection to the motion filed by the United States Trustee, in particular with respect to the amounts, because we had proposed 75,000 and 750. And in revisiting and scrubbing

the numbers with the company again, we decided that we can work within the request of the U.S. Trustee for 50,000 per month and 500,000 dollars over the course of the case. So we've made those changes to the order.

There's one other concept that was not in the motion as filed, but it was raised in discussions regarding retentions. And as I'll get to, the professionals on the debtors' side have agreed, whatever retainers they have, they're going to apply to the first fees paid out. And we want to incorporate that concept with respect to ordinary-course professionals, to the extent that they're holding retainers. We'd like them to apply the retainers against the first fees paid; and we've built that into the order.

THE COURT: Anybody wish to be heard with respect to the retention of ordinary course professionals?

All right, that's granted.

MR. MARINUZZI: Your Honor, the next item on the agenda is the debtors' application to retain Curtis Mallet as conflicts counsel.

THE COURT: Yes.

MR. MARINUZZI: No objections to that motion, Your Honor. Unless Your Honor has any questions, we'd ask that that application be granted.

THE COURT: Anybody wish to be heard with respect to the Curtis Mallet retention application?

All right, it's granted.

MR. MARINUZZI: Thank you, Your Honor. Under contested matters is the application to retain Morrison & Foerster. The U.S. Trustee filed an objection raising duplication issues that we'll talk about, as it pertains to the 327(e) professionals as well, and asked for additional disclosures, which we've made, as did the other professionals.

We believe, subject to negotiating a form of order for the United States Trustee that satisfies them on the duplication issue, and we think that a template for that is really set forth in the supplemental declarations provided by the 327(e) professionals, that provides a finer point on the services they're going to be provided, we think we've resolved the U.S. Trustee's objection.

THE COURT: Mr. Masumoto?

MR. MASUMOTO: Good morning, Your Honor. Brian Masumoto for the Office of the United States Trustee. Counsel is correct. But if I may state for the record, some of the concepts that we had wanted to incorporate. One is with respect to the catchall provision that exists. We're hoping to narrow it down to indicate that any of the, at the moment, undefined services that may be provided for by the professionals would be within the scope of the services that they're hired at this point. Anything beyond that scope, they'd have to get a separate order of the Court.

In addition, we're asking that as they expand their services within the scope of the area for which they're retained, they would file supplemental declarations to indicate that they're doing these additional services.

What we're also hoping to work out and include in the order is the concept that with respect -- between and among debtors' counsel and the special counsel, that project categories be as uniform as possible, to allow for a -- to facilitate the review of any potential duplication.

THE COURT: I think that's the key. Because at least one -- certainly one of the keys from our standpoint -- "our standpoint" meaning my chambers' -- we do review fee applications quite carefully. When it becomes most difficult is when there's no uniform set of project categories among professionals. So to the extent possible, that should be done. Because it does really help facilitate our review.

MR. MASUMOTO: Yes, Your Honor. And we're hoping to incorporate that within the context of the order.

THE COURT: All right. Mr. Marinuzzi, where do things stand in terms of trying to negotiate language for the order?

MR. MARINUZZI: We just had a conversation this morning, Your Honor.

THE COURT: Okay.

MR. MARINUZZI: We knew conceptually that we were going to get to the point of just finding the right language.

But I think we've resolved it, subject to the language that we're going to negotiate after the hearing.

THE COURT: All right. Anybody else wish to be heard with respect to the Morrison & Foerster retention application?

Mr. Eckstein?

MR. ECKSTEIN: Your Honor, good morning. Kenneth Eckstein, proposed counsel for the creditors' committee. Judge, generally, we had filed a reservation of rights on a similar point with respect to avoiding duplication. It's a complicated case. There are the need for a lot of different professionals and expertise. And we thought it was just worth noting that I think all parties are going to have to work both on the legal and the financial side to really ensure that there is no duplication and that there's efficiency. I think that's something we have to focus on prospectively.

THE COURT: Okay. I mean, one of the things that's a little unusual or a little different in this case is that the debtors expressed from the start, I think with the support of the committee, that ResCap be able to conduct business as usual. Part of their business as usual involves a lot of litigation around the country. The Court's already entered an order lifting the stay as to various types of claims and things. And there are lawyers representing ResCap in those cases. And when I reviewed the retention applications, a number of them are involved in the representation of the

debtors in ongoing litigation.

So I certainly -- while the Court is always concerned about proliferation of professionals in a case, I certainly fully understand that the nature of this case requires it, but it also requires the effort to monitor that there isn't unnecessary -- there isn't duplication of effort and that Mr. Marinuzzi, you know, at the end of the day, from the debtors' side, the buck stops with your firm. And if the U.S. Trustee or the Court begins to raise questions about duplication, you and your colleagues are the ones who are going to have to make sure that that doesn't happen. Okay?

MR. ECKSTEIN: We're all counting on Morrison & Foerster.

THE COURT: Yes, I know.

MR. MARINUZZI: Thank you, Your Honor.

THE COURT: All right. Anybody else wish to be heard?

All right, the Morrison & Foerster retention is approved subject to the Court's review of a proposed order when that's submitted.

MR. MARINUZZI: Thank you, Your Honor.

THE COURT: Okay.

MR. MARINUZZI: The next application is the debtors' application to retain Carpenter Lipps & Leland as special counsel under 327 --

THE COURT: That's one of the firms I had specifically

in mind, because they're representing the debtors in litigation.

MR. MARINUZZI: Yes. On litigation that's been ongoing for years.

THE COURT: Right.

MR. MARINUZZI: There was one objection. And we'll deal the same way we'll deal with Morrison & Foerster and the other 327(e), with crafting language with the U.S. Trustee. The same resolution will apply to Carpenter --

THE COURT: There's also the Lewis application --

MR. MARINUZZI: Exactly.

THE COURT: -- Lewis objection. It's overruled.

MR. MARINUZZI: Thank you, Your Honor.

THE COURT: Does anybody else wish to be heard with respect to the Carpenter Lipps & Leland retention application?

All right, it's approved, subject again, to reviewing the order.

MR. MARINUZZI: Thank you, Your Honor. And that brings us to the debtors' application to retain Dorsey & Whitney as special securitization and investigatory counsel under Section 327(e). Same resolution with the U.S. Trustee, Your Honor.

THE COURT: Explain to me a little bit more about what is -- in terms of investigations, what's -- who's doing what among the professionals for the debtor?

MR. MARINUZZI: Your Honor, there were investigations and actions that commenced before the petition date where the company retained, in this case, Dorsey & Whitney. And depending upon how long ago these proceedings began, there was either a great deal of work done or not so much work done. And whatever work had been done, is work that, to the extent Morrison & Foerster is going to take over the work -- now many of these are stayed, but who knows what might happen in the future and how we have to resolve these claims as part of a plan process -- as we progress in the case, I anticipate with respect to the activities and Dorsey & Whitney, that they'll become Morrison & Foerster activities.

But we're going to need their cooperation. We're going to need the information they've already obtained, whatever progress has happened in the case to date, for us to actually have a smooth transition from Dorsey & Whitney to Morrison & Foerster.

In court today is Tom Kelly, to the extent that Your Honor has any specific questions that I can't answer.

THE COURT: Well, one --

MR. MARINUZZI: I'm sure he'd be happy to answer them.

THE COURT: -- question I have, and this may apply to others. Dorsey & Whitney had a pre-petition retainer at 250,000 dollars. What's not clear to the Court is how much of that remains.

MR. MARINUZZI: Your Honor, I don't know. I'll defer to Dorsey & Whitney. I thought it might have been addressed in the supplemental declaration. But if it's not --

THE COURT: Maybe it was and I missed it.

I guess it is, because I see Mr. Masumoto pointing to it.

MR. KELLY: It was addressed, Your Honor --

THE COURT: Okay.

MR. KELLY: -- in the supplemental declaration. We have not applied any of it, because the case was filed and we hadn't --

THE COURT: Right.

MR. KELLY: -- done so. We have 227,000 dollars' worth of pre-petition fees and disbursements that we want to apply.

THE COURT: Against the 250,000 dollar retainer?

MR. KELLY: Right. So we'll have 22,000 left afterwards.

THE COURT: Okay. All right, thank you very much.

Does anybody else wish to be heard with respect to the Dorsey & Whitney retention application?

All right, it's granted.

MR. MARINUZZI: Thank you, Your Honor. That brings us to the debtors' application to retain Orrick, Herrington & Sutcliffe under 327(e). Your Honor, the simplest way I could

describe Orrick is that they wrote many of the securitization documents that we're going to need some help analyzing during the case.

THE COURT: Okay. Anybody wish to be heard with respect to the Orrick, Herrington & Sutcliffe retention application?

All right, it's granted.

MR. MARINUZZI: Thank you very much, Your Honor. Your Honor, that brings us to the debtors' application to retain Mercer as compensation consultant. Your Honor, the objection was filed by the U.S. Trustee regarding the payment of attorneys' fees, which was the subject of Your Honor's decision in Borders. I'll turn over the podium to Mr. Masumoto to prosecute his objection.

THE COURT: Okay.

MR. MASUMOTO: Good morning, Your Honor. Brian Masumoto for the Office of the United States Trustee. Your Honor, with respect to the Mercer application, we had several objections, all of which have been resolved. I just wanted to mention the two, sort of, that remained at the end, were the concept that they're hourly compensa -- their quarter-hour increment in terms of their records. The supplement addresses it in somewhat of a convoluted fashion, but it seems --

THE COURT: They ought to change their system to tenths of an hour, but --

MR. MASUMOTO: I understand, Your Honor. But it appears that over fifteen minutes, they'll be rounding down for the first ten, and for the last five, they would round up, which seems to be consistent with the tenths of an hour increment, and avoiding the concern of overbilling to the estate. So that appears to have been resolved.

The remaining issue is the one that Mr. Marinuzzi alluded to. And as we have indicated in our papers, as we understand the Court's decision in Borders --

THE COURT: Well, I think -- you know, I read your objection. You obviously continued the objection. But I thought you actually went a little too light on it, in the sense that the Borders decision first -- I mean, it was distinguishable from this case, because Borders makes clear that the objection to the Mercer application did not arise until the first fee application. That at the time of the retention the Office of the U.S. Trustee had asserted a general reservation of rights but had not specifically objected to the expense reimbursement provision as being the source of authority for counsel retention.

So I think there's more to your objection here than there was in Borders. Now, that, of course, isn't the end of the story. The supplemental declaration submitted answers maybe part of the question. But in the Borders opinion, which I reread again this morning, I focused on let's deal solely

with the reimbursement of outside counsel in connection with retention. I asked, in that opinion, a series of questions about whether the professional in that case and in this case, Mercer, charges its clients both for bankruptcy matters and nonbankruptcy matters for counsel fees in connection with retention. I specifically raised the question in the Borders decision whether it is or should be considered part of overhead. There were a whole -- there were a series of questions that I raised.

Certainly, here you've raised the objection, and it is at the retention stage, not at the fee application stage. I guess the one thing that I said and would still adhere to here is that 327 is not the issue. And I guess the supplemental declaration says that -- the supplemental declaration of John Dempsey, paragraph 8: "Mercer customarily requests and receives similar reimbursement rights from its clients."

That same paragraph 8 says that, "To date, Mercer's outside legal fees are estimated at less than $6,000. Mercer will only seek reimbursement from the debtors of those legal fees that were performed solely on behalf of Mercer."

I guess -- I'll let you -- you can say more if you want. I don't know how far you explored this. I mean, I don't think -- the Borders -- I adhere to what I said in Borders. But what I said in Borders is more complicated in a situation such as the one where you've raised your objection now.

MR. MASUMOTO: Well, Your Honor, as to -- it seems that the issue of inquiry as to whether it would be part of overhead is actually part of the objection that the U.S. Trustee has raised --

THE COURT: I know.

MR. MASUMOTO: -- in the past. And I don't know whether or not, again, within the parameters of the judge's decision in Borders, indicating that if they customarily bill it outside, whether that disposes of the inquiry as to whether or not it's treated as part of their overhead.

In addition, we assume that even in accordance with the Borders decision, going forward, to the extent that they have -- if they use outside counsel to review their time records and so forth, within the prohibited categories, that that would still be subject to an objection and disallowance at the fee application stage.

THE COURT: All right.

MR. MASUMOTO: As to whether or not fee app preparation, on the other hand, I think that may be probably the most outstanding issue related to going forward, the issue of whether or not outside counsel could prepare their fee application and include that as reimbursement, is a frequent concern that arises.

At this stage, the services for being retained are identified at 6,000. But going forward, the ones that we've

seen to be included among the permissible services argued by the financial advisors is that fee application preparation should also be included and permitted by outside counsel. If the Court's inclined to clarify that point at the outset, I think it might help the parties. I think they're on notice with respect to the impermissible types of services.

THE COURT: Well, let me say, if I approve the retention as presented, I believe, and I'm making it clear now, that because it's -- it then becomes part of actual necessary expenses, and the issue under actual and necessary expenses leaves it to the Court to review the detailed application. As occurred in Borders, I think initially it was just listed as an expense item and the Court requested and received detailed fee statement from Freeborn & Peters, which I guess is also the same counsel here.

MR. MASUMOTO: Same firm.

THE COURT: And we reviewed that in detail for reasonableness; also looked at it and disallowed a very small portion of the fees because it appeared to the Court to be work for the estate as opposed solely for Mercer. And the engagement letter here, I think make clear. It says on page 3, "In addition to such compensation, we also bill for necessary travel and other expenses related to the services requested, including legal fees associated with our retention, subsequent fee application with the U.S. Bankruptcy Court, if required,

and any request of participation in contested matters of litigation, such as depositions, responding to subpoenas or discovery requests and court testimony."

So I mean, in Borders I decided, and would adhere to, that because lawyers can charge for preparation of their fee applications that other professionals can. And it would frequently be the case that lawyers would be used in connection with retaining it. When I review the fees to conclude whether they're reasonable, and I'm definitely going to -- assuming I approve the application -- everybody ought to understand, Mercer needs to understand, I would do it expressly with the understanding, the Court reserve the right to review the specific amount of fees sought in connection with preparation of fee applications.

In Borders I think I cited some cases that distinguished between preparation of fee applications and the cost of "defending" a fee application if it's challenged. That may or may not -- Judge Bernstein -- I cited to one of Judge Bernstein's decisions on that. And I do see that distinction and would adhere to that distinction.

And Mr. Masumoto, are you objecting to the indemnity concept?

MR. MASUMOTO: No. With respect to indemnity, usually, in fact, explicitly the provisions under the indemnity provisions allow attorneys representing the professional with

respect to indemnification issues. That is one attorneys' fees that we explicitly allow, subject to, again, all of the normal guideline restrictions that apply.

THE COURT: You know, I said in Borders at 456 B.R. 208, "Professionals may only be compensated in bankruptcy cases for reasonable fees and expenses, taking into consideration customary fees in bankruptcy and nonbankruptcy matters," referring to General Order M-389. "If a professional does not charge for counsel fees for negotiating retention in nonbankruptcy matters, then such charges are inappropriate in bankruptcy cases. Expense reimbursement should also bear a reasonable relationship to the likely amount of the professional's compensation. Caps on the amount of reimbursable expenses can also be negotiated. But where the fees are incurred in representing the professionals and not in performing work for the debtor, Section 327 does not apply."

Mr. Marinuzzi, is there an estimate of what the total fees for Mercer are likely to be in the case? I mean, nobody took me up on my invitation to negotiate a cap for what -- I mean, I don't know. Has the clock stopped running on the fees on retention?

MR. MARINUZZI: Well, Your Honor, I think in theory -- well, actually no, insofar as counsel is on the phone right now. I --

THE COURT: Well, I hope they like listening. But I'm

not sure I would reimburse them for the expenses of listening in today. Okay?

MR. MARINUZZI: Okay. I guess --

THE COURT: They might take that into account when then put in a fee application.

MR. MARINUZZI: -- I guess, Your Honor, my response is, it will depend in large measure on how much work is done in connection with the KEIP KERP and frankly how much opposition there is to the KEIP KERP.

THE COURT: Well, the U.S. Trustee always objects to a KEIP KERP.

MR. MARINUZZI: And we hope to work through those issues before we actually file the motion. We intend to provide them with a draft. We hope to work through the issues with the committee. We really want to try to minimize the time in front of the Court as well as deposition time.

In the context of this case, Your Honor, obviously, this is not going to be a large expense. Having said that, I don't know that I can suggest a cap. I just don't know. They've incurred 6,000 to date. If they have to attend and prepare for depositions --

THE COURT: I'm just talking about retention right now.

MR. MARINUZZI: Retention? I --

THE COURT: The indemnification issue, I think Mr.

Masumoto has already indicated -- if Mercer's going to be deposed in connection with a KEIP and KERP, for example, Mr. Masumoto, I guess you wouldn't disagree they're entitled to have counsel represent their people at a deposition?

MR. MASUMOTO: That's correct, Your Honor.

THE COURT: Okay.

MR. MASUMOTO: To the extent that they need to represent --

THE COURT: So that's not the issue, Mr. Marinuzzi.

MR. MARINUZZI: Okay. All right. Your Honor, if we're talking specifically about retention issues, I would just defer to counsel for Mercer, who is on the phone now.

THE COURT: Okay.

MR. EGGERT: Yes, Your Honor. This is Devon Eggert of Freeborn & Peters on behalf of Mercer. In the supplemental declaration, we indicated that to date for retention the amount was less than 6,000. And assuming the retention application would be granted today, there would be no more time for retention. And we're mindful of the Court's request to not seek reimbursement for the time spent for this hearing.

THE COURT: Thank you. You could seek it, but --

MR. MARINUZZI: Your Honor, we agreed that they wouldn't fly out here for this hearing to save expense.

THE COURT: Is someone here from Mercer?

MR. MARINUZZI: Your Honor, the declarant, John

Dempsey is on the phone.

THE COURT: All right. Mr. Dempsey, what I would like to know is, you say in your supplemental declaration that Mercer customarily requests and receives similar reimbursement rights from its clients. What I'd like to know is, outside of bankruptcy matters, do you regularly receive -- not request, but receive reimbursement for counsel fees in connection with your engagement?

MR. DEMPSEY: We receive reimbursement for our -- for when we engage outside counsel in connection with litigation.

THE COURT: That wasn't my question. That wasn't my question. My question -- I'm focusing -- the issue in my mind, Mr. Dempsey, is whether retention is really built into overhead. And so my question specifically is with respect to your retention, whether you regularly charge for and receive reimburse -- do you use outside counsel for retention in nonbankruptcy matters?

MR. DEMPSEY: No we do not. But --

THE COURT: Do you --

MR. EGGERT: Your Honor, this is --

THE COURT: Just a second.

MR. EGGERT: -- Devon Eggert of --

THE COURT: No. Let's -- answer my questions. Then I'll let you say what you want.

Do you have inside counsel?

MR. DEMPSEY: We do. Which is corporate counsel. They're not specialists in bankruptcy.

THE COURT: Well, but do they review -- your engagement letter is boilerplate. Does your inside counsel review retention applications before they're signed in nonbankruptcy matters?

MR. DEMPSEY: Only -- well, there are not retention applications --

THE COURT: Well, not applications. Engagement letters. I mean, look, Mr. Marinuzzi, here's the thing that's bothering me, and I said this in the Borders opinion. I wanted to know -- in order to get reimbursed for counsel expenses in connection with retention, you have to look to both bankruptcy and nonbankruptcy matters. And I mean their engagement letter is pure boilerplate, okay. And I don't -- yes, engagement in a bankruptcy matter, retention in a bankruptcy matter, requires more work than in a nonbankruptcy matter. But it seems -- do you know whether they have been reimbursed for their outside counsel fee -- do they use outside counsel, Mr. Marinuzzi, in their retention in all bankruptcy matters?

MR. MARINUZZI: Your Honor, I don't know the answer to that.

THE COURT: So I want to see another supplemental declaration. I want to know whether they use outside counsel in retentions in all bankruptcy matters; whether they have

received reimbursement for outside counsel fees in all bankruptcy matters. I don't want it to become automatic that if they apply for retention in the Southern District of New York, they simply get it. That was -- I mean, in Borders I made clear, it would be a different -- it was a different issue if the objection was raised at the time of retention. That's what's happened here.

And so I'm not satisfied -- I mean, the 6,000 dollars standing alone is not an inordinately high figure. That's not my problem with it. But I don't understand why it's not built into their overhead. Are they using the same rates -- do they use the same rates in bankruptcy and nonbankruptcy matters? I want to know more.

MR. MARINUZZI: That's fine, Your Honor.

THE COURT: Okay.

MR. MARINUZZI: We'll work with Mercer to provide --

MR. EGGERT: Your Honor, this is Devon Eggert. May I just add just a small point of clarification?

THE COURT: Go ahead.

MR. EGGERT: If I may? The question about if Mercer uses outside counsel outside of bankruptcy. The amounts incurred to date relating to retention, that does not have any time with respect to negotiating the engagement letter. That deals only with the retention application. So if Mr. Dempsey is negotiating with a potential client on an engagement letter

for compensation services, we are typically not involved at that point.

THE COURT: Does Mercer have a different fee structure for matters involving companies that are in a Chapter 11 proceeding versus nonbankruptcy matters?

MR. EGGERT: I think I would have to defer to John Dempsey on that question.

THE COURT: Mr. Dempsey?

MR. DEMPSEY: Yes, this is John Dempsey. No, we charge the same hourly rates inside and outside of bankruptcy. And we charge -- we are reimbursed for legal expenses associated with work on behalf of the client. And the contract negotiation of engagement letters, as Devon has noted, is a separate process from this process of getting retained in Court, which is unique to bankruptcy. And we have -- we always have this provision for seeking reimbursement, because it's a special thing we do on behalf of our clients because we are asked by the debtor's counsel to go down this process of getting retained.

THE COURT: So --

MR. DEMPSEY: This is something the client is triggering that we have to do.

THE COURT: Mr. Marinuzzi, I specifically said in the Borders decision at 456 B.R. 208, "If a professional does not charge for counsel fees for negotiating retention in

nonbankruptcy matters, then such charges are inappropriate in bankruptcy cases."

MR. MARINUZZI: What I think I heard is they're not charging for negotiation of the engagement letter; it's the retention application that they're charging for.

THE COURT: And this said retention, it didn't say engagement letters. So --

MR. EGGERT: Well, Your Honor, Devon Eggert for Mercer. Just one last point. I mean, there really aren't any charges for retention outside of bankruptcy. And I think that was what Mr. Dempsey was getting at, is that the unique nature of a bankruptcy case and needing to be retained is why there's a charge for retention in a bankruptcy case, but there's no charge for retention outside of bankruptcy.

And when he enters into these engagements before a company files for bankruptcy, this provision is in here in the event the bankruptcy actually occurs. There are engagements where he has this provision but the company does not file for bankruptcy. But that provision is still in those engagement letters.

MR. MASUMOTO: Excuse me, Your Honor. If I may? I believe you quoted to the supplement previously in paragraph 8 where it says, "Mercer customarily requests and receives similar reimbursement rights from its clients," which seems to suggest that they are asking for reimbursement for attorneys'

fees outside of bankruptcy, contrary to, I guess, what was just stated. So maybe just a --

THE COURT: Well, I think what they're saying is they don't -- the language may be there, but outside of bankruptcy they don't need -- they have the right, but outside of bankruptcy they don't use outside counsel, because they don't have to do a retention application. So --

MR. EGGERT: That's correct, Your Honor. It's never triggered.

THE COURT: -- right, it's not triggered. The language is there, it's just not triggered. And look, I'm mindful of that. I guess -- is there somewhere in the declarations that it indicates that Mercer charges the same hourly rates for matters that are in bankruptcy and outside of bankruptcy?

MR. EGGERT: Your Honor, in paragraph 15 of the original declaration, it says, "The fee structure and other provisions of the engagement letter are consistent with the terms of other Mercer engagements, both in and out of bankruptcy court proceedings."

THE COURT: Okay, thank you. Mr. Masumoto?

MR. MASUMOTO: Your Honor, if Your Honor is satisfied that the overhead issue has been resolved, we'll defer to the Court's order. But if they're only charging for the retention application, which does not exist outside of bankruptcy, the

issue of overhead is not fully addressed.

From our standpoint, we believe that it should be, even in the bankruptcy context, part of the cost of doing business. I mean, many people interview before committees and they incur the cost of what we refer to as a "beauty contest". And if they're not, obviously, selected, they can't apply to the estate for the cost of seeking to be retained. Similarly, the cost of being retained in the bankruptcy context, we believe, should be absorbed by the professional.

And particularly so in cases, as with Mercer, where you have a sometimes not strictly an hourly rate. Particularly with financial advisors, there's always the concern that in essence, they're sort of farming off the cost of the expense.

THE COURT: I think the financial advisor, because the fee structure is different, it's not an hourly basis, raises a bigger issue about whether it's part of overhead or not, than a professional that's billing strictly on an hourly basis.

MR. MASUMOTO: Understood, Your Honor. It's just that, from our standpoint, we believe that even with hourly professionals -- as Your Honor indicated, we're particularly concerned with the financial advisors and fixed monthly compensation -- but even with the hourly professionals, as indicated, we believe that the cost of being retained should be borne by the professional.

Many times, Your Honor, especially in the large cases,

you have complex issues. And some of those complexities and conflicts arise because of the nature of the professionals themselves. It's not the bankruptcy per se, but the nature of their relationships to other parties and so forth. And if they undertake to be retained under that circumstance, it seems only fair that they should bear the cost, and not the estate. It's not the estate that has established those connections, it's the professionals.

And so whatever is unique to that professional -- if a professional comes in with no conflicts at all, there should be very little cost to that professional and presumptively to the estate, if the estate bears the cost. So from our standpoint, it should be, for all professionals, hourly or not, a matter of their costs.

MR. MARINUZZI: Your Honor --

THE COURT: Go ahead, Mr. Marinuzzi.

MR. MARINUZZI: -- if I could just respond to that? I also, obviously, read the Borders decision. And what I took away from it on the overhead issue is that it wasn't overhead for Mercer, as the Court ruled last time, notwithstanding the context. I don't know that it made a difference whether the objection was asserted at the beginning or the end, for purposes of determining whether these fees are overhead. And Your Honor concluded it wasn't overhead for the same firm, less than a year ago. I don't know that the fact that it's being

asserted now versus at the fee application time changes that conclusion. But obviously, it's Your Honor's decision.

THE COURT: Anybody else wish to be heard with respect to the Mercer retention?

(Pause)

THE COURT: I'm going to approve the Mercer retention application with the following caveats. I intend to review the fees incurred, as will be with expenses, very carefully. So because simply saying that fees in connection with retention should be reimbursable expenses, I am very mindful of the issue that Mr. Masumoto raises about conflicts. So where protracted work is required in connection with retention, because of the professional's connections and contacts and potential conflicts, I might well disallow those fees.

There's no question that because bankruptcy requires a retention application for professionals such as Mercer, and that this is a legal context, and therefore it does seem appropriate to the Court for them to use professionals in doing so, I'm not categorically excluding reimbursement for those expenses. It becomes a question of why don't they use their own inside counsel for doing it versus outside counsel. Mercer's been using outside counsel for it.

But when I review the fee application, I don't know at this stage -- I know they've said it's approximately less than 6,000 dollars that's been incurred to date -- I don't know

without looking at the detailed time entries what that 6,000 dollars was incurred for doing -- what did they do for that.

So if the Court subsequently determines that the issues in a particular retention arose because of conflicts issues, for example, I might well conclude no, that shouldn't be a reimbursable expense. If the professional decides they want this engagement and their other -- work for other clients presents complications for them, and they're seeking advice from counsel on that, I might well just disallow it. I'm not categorically -- in saying I will approve the engagement that includes reimbursement for their expenses in connection with retention, that should not be taken as a categorical approval of whatever shows up in a fee application.

And if the fee application is not sufficiently revealing of what they did, I'm going to ask for more detail about it. Okay? So that will be -- I will approve the retention application.

I think, just so we're clear, the preparation of fee applications, there, as I said in the Borders decision, subject to reviewing the fees for reasonableness, I think that's appropriate. And Mr. Masumoto's raised no question about the indemnity issue. Okay.

MR. MARINUZZI: Thank you, Your Honor.

THE COURT: Thank you, Mr. Masumoto. Thank you, Mr. Marinuzzi.

MR. MARINUZZI: Thank you, Your Honor. Your Honor, the last retention application on the calendar today is the committee's application to retain counsel, Kramer Levin. I'd cede the podium to Kramer Levin.

THE COURT: Is Rubenstein on?

MR. MARINUZZI: Oh, I apologize, I missed it. You're right. Thank you. Your Honor, the last retention application on the debtors' side is the debtors' application to retain Rubenstein Associates as corporate communications consultants. There was an objection by the U.S. Trustee regarding billing in quarter hour increments, and they've decided to bill in tenths of an hour increments to satisfy that objection.

THE COURT: And the Court noted that with respect to the reimbursement for counsel fees, it did not include -- in connection with retention -- it was essentially the indemnity.

MR. MARINUZZI: Indemnity, right.

THE COURT: Mr. Masumoto, anything that you want --

MR. MASUMOTO: No, thank you, Your Honor.

THE COURT: All right. That's approved.

MR. MARINUZZI: Thank you, Your Honor. And now I'll cede the podium to Kramer Levin.

THE COURT: Okay.

MR. ECKSTEIN: Your Honor, good morning. Kenneth Eckstein, Kramer Levin, proposed counsel for the creditors' committee. I was hoping I could rely on Mr. Marinuzzi, but I

guess I couldn't on this one, so I'll present it myself.

Your Honor, we submitted our retention application in connection with our representation of the creditors' committee. We reviewed it with the U.S. Trustee. We didn't receive any objections. So unless Your Honor has any questions, we would respectfully request approval of the motion.

THE COURT: Does anybody wish to be heard with respect to the Kramer Levin retention application?

All right. It's approved as well.

MR. ECKSTEIN: Thank you, Your Honor.

THE COURT: Thank you.

MR. LEE: Good morning, Your Honor. Gary Lee from Morrison & Foerster, counsel for the debtors. I think I can say that now, subject to the order. The last item, I think, on the agenda, is the status conference on our motion for a final order approving the servicing agreement between the debtors and Ally Bank.

Your Honor, there have been very serious discussions between the debtors, the committee, and Ally, regarding this motion. And the parties have agreed that it would be the professionally responsible thing to do to give the business principals some time to talk here about the motion. It's an important motion. I think, as we said, it's one of the cornerstones of the entire case. And so in that regard, the proposal, Your Honor, is, that the debtors will adjourn the

status conference until July the 24th, and the hearing until August the 8th.

The debtors are going to file a supplemental declaration, Your Honor on Monday. We've shared a draft of that declaration with the committee. And it will set out further details regarding the motion and why it's a critical component of the case.

We are working on a discovery schedule with the committee. If there is a need for an evidentiary hearing on August the 8th -- and in the meantime there have been informal productions of documents. We've received a formal request, and we're in the process of compiling that. So in the event there is a hearing, nobody is caught by surprise and loses any time.

THE COURT: Mr. Lee, tell me, the anticipated schedule is that it'll come before the Court when?

MR. LEE: On August the 8th.

THE COURT: And are you requesting that the August 8th hearing be an evidentiary hearing if necessary?

MR. LEE: Your Honor, in the event that the parties are unable to reach any kind of resolution -- and we hope to be at a report on that by July the 24th -- the committee's indicated that they believe the next hearing will need to be an evidentiary hearing. The intend to call witnesses. And I believe the debtors will need to do the same. So, yes, Your Honor, if possible, August the 8th would be an evidentiary

hearing.

THE COURT: I don't think so. Because I have MF Global in the morning and the ResCap KEIP KERP motion --

MR. LEE: Which is also mine, Your Honor.

THE COURT: -- is scheduled for 2 o'clock. It's on the calendar for 2 o'clock. I don't want to anticipate whether the U.S. Trustee or the creditors' committee will object to the KEIP KERP motion, but I haven't seen a KEIP or KERP that hasn't been objected to -- I don't think ever, but --

MR. LEE: Well, Your Honor, we'll work very hard between now and then to ensure that there aren't any. We've actually had discussions with the committee regarding the KEIP and KERP, and we are in the process of engaging with the U.S. Trustee on that too. But you're right, it might be ambitious.

But for various reasons, Your Honor -- I apologize for interrupting -- there are some fairly important reasons why it can't slip much beyond August the 8th. The reason is because the bank, which is the counterparty to this agreement, is a regulated entity. And the FDIC is watching what we're doing quite carefully and we wanted to get the --

THE COURT: Yes --

MR. LEE: -- I appreciate -- every regulator under the sun is watching what we're doing quite carefully. But we are under a certain amount of pressure to get the first hearing date that we can.

THE COURT: Well, I don't find that to be -- the fact that the FDIC is keeping a close watch is not necessarily persuasive of having an evidentiary hearing on it. Part of my problem is that I'm out of town the week before. I'm committed to always being prepared when I have a hearing in advance.

MR. LEE: I have had that experience, Your Honor, yes.

THE COURT: And so the question is, will the schedule allow enough time for me to feel fully prepared. I'm not sure if I can do that. I'm not asking you to give me a preview all of the issues, but what issue do you -- if there has to be an evidentiary hearing, what issues do you anticipate will require an evidentiary hearing?

MR. LEE: I'm going to try and keep my comments neutral, because the parties are engaged in --

THE COURT: I understand that.

MR. LEE: -- fairly sensitive negotiations. I think, Your Honor, the principal issues --

THE COURT: Well, let me stop you for a second.

MR. LEE: Yes.

THE COURT: I don't want to do anything to upset --

MR. LEE: Thank you, Your Honor.

THE COURT: -- delicate discussions in an effort to work this out.. You're going to be back here on July 24th?

MR. LEE: Yes, Your Honor.

THE COURT: We're going to put this on for a status

conference on July 24th.

MR. LEE: Yes, Your Honor.

THE COURT: And at that time, I expect a fuller discussion. And if necessary, we'll talk about exactly what the Court requires if there's going to be an evidentiary hearing, and what that will -- you're also on the calendar for August 14th.

MR. LEE: Yes.

THE COURT: I don't know -- I mean I see a lot of matters listed on the calendar for August 14th. There's a lot of stay relief motions. I don't know if we will have them or not it or not, or whether -- what those will entail.

So it's possible, Mr. Lee, that August 14th will be the date for an evidentiary hearing. And if necessary, start thinking now about which of the ResCap matters that are on the calendar for August 14th can be moved. Right now there's nothing on the calendar on August 14th other than lift stays.

MR. LEE: Your Honor, may I ask a quick question? Did we have a holding date on the 9th, or has that gone already?

THE COURT: You're on the calendar for the 9th. You have retention applications for Deloitte, KPMG, continued hearing if necessary for KEIP and KERP.

MR. LEE: I hope not, Your Honor.

THE COURT: I didn't put these entries in there. I've got Borders for the 10th.

MR. LEE: Would it be possible, Your Honor, just to tentatively set it for the 9th?

THE COURT: Well, it comes back --

MR. LEE: Or is that --

THE COURT: -- to the same problem.

MR. LEE: Okay.

THE COURT: How much preparation is going to be required for me.

MR. LEE: I understand, Your Honor.

THE COURT: And I'm away the prior week. It's -- I'm not -- let's talk about it on the 24th.

MR. LEE: Okay. And I'll commit, there'll be a full preview of the issues on the 24th. We would have done it today, but for the fact that the parties are engaged.

THE COURT: That's fine.

MR. LEE: Thank you.

THE COURT: I don't want to upset discussions that are constructive discussions.

Just, ordinarily, Mr. Lee, on anything that's a contested matter requiring an evidentiary hearing that's at all complicated, I want papers a week in advance.

MR. LEE: I see.

THE COURT: And that may be possible for you, but I won't be here for -- I'll be here for part of the week, but not all of the week. And it limits my preparation.

MR. LEE: And I can guarantee it will be complicated, so.

THE COURT: We'll see on the 24th.

MR. LEE: Okay, thank you, Your Honor.

THE COURT: Thank you. Mr. Eckstein?

MR. ECKSTEIN: Your Honor, Kenneth Eckstein, of Kramer Levin, counsel for the creditors' committee. I'm going to begin by concurring with Mr. Lee that this will be complicated. And I think it will be --

THE COURT: Sufficiently complicated that if there's an evidentiary hearing, it's going to be more than one day?

MR. ECKSTEIN: Potentially, yes. I think that in the first instance, we concur with the judgment to adjourn today's status conference. There were fairly significant discussions that took place this week among the professionals about this motion. And I think all parties have concurred that it would be appropriate for the principals to meet.

THE COURT: And I'm not pressing the issue --

MR. ECKSTEIN: I understand. I do think, Your Honor, that there are issues about this motion that do require significant additional disclosure. And we have been assured by Mr. Lee that a significant additional submission is going to be made, which we think will be very important, and obviously would be something that all parties are going to want to react to. And I think that would also justify adjourning the motion.

The issue does go to the heart of the relationships between ResCap and Ally and the operations of the business and what is and is not appropriate in terms of payments during the Chapter 11 case, in contrast to what might be appropriate to be dealt with in connection with a plan, both in terms of pre-petition obligations and post-petition obligations and how those should be allocated.

We think it would be useful if we can bring to the Court a resolution. We think that would be worthwhile to pursue. We think that we should use the 24th as a date to review the issues. And I think that that could advance the ball quite significantly, because I think Your Honor will hear the issues. And my sense is that without an evidentiary hearing we can probably frame a lot of the factual issues, which are, I think, more important in many respects, and more difficult than the legal issues. I think the legal issues are important, obviously, but I don't think that's where the big controversy and complexity arises.

So I think using the 24th will allow everybody to assess what is necessary. And there's obviously a real possibility that by the 24th we'll have made business progress. And I imagine if we can make progress, maybe we'll be able to arrange to submit an order earlier and get the matter resolved without the need for a lengthy and contentious hearing.

But at this point, I think, we're prepared to proceed

along the lines of let's have the discussions. They're going to be scheduled for next week. And I think, for now, it would probably be useful if we could use a response holding date for either August 1st or August 2nd, which would be a week in advance of August 8th or August 9th, which is what we were anticipating. I think the intention was to work out a discovery schedule with Mr. Lee, which I imagine we'll have in place, certainly before the 24th. We haven't had any problems in working out discovery. And we can bring back the specific issues to Your Honor on the 24th, depending upon where the matter stands.

THE COURT: Okay. Let's see where things stand on the 24th. Okay?

MR. ECKSTEIN: Thank you.

THE COURT: Thank you, Mr. Eckstein.

Mr. Marinuzzi? I'm sorry. Go ahead, Mr. Lee.

MR. LEE: Apologies, Your Honor. Just one additional point. Gary Lee from Morrison & Foerster. Ally has agreed to extend the provision in the DIP that would otherwise automatically default by virtue of the fact that we won't have gotten approval for this agreement by, I believe it's the end of the month. So we're able to carry over. I just wanted to bring that to the Court's attention, that they've agreed to work with us on that, too.

THE COURT: Thank you, Mr. Lee.

MR. LEE: Thank you.

THE COURT: All right. Anything else, anybody wants to raise? Mr. Marinuzzi?

MR. LEE: No, Your Honor. Thank you very much, again.

THE COURT: All right. We're adjourned. Thank you very much. Everybody have a good weekend.

(Whereupon these proceedings were concluded at 11:04 AM)

I N D E X

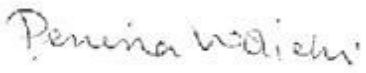
RULINGS

RULINGS

	Page	Line
Dorsey & Whitney retention application is granted.	19	22
Orrick, Herrington & Sutcliffe retention application is granted.	20	7
Application to retain Mercer is granted with the limitations as delineated on the record.	37	6

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.



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PENINA WOLICKI

AAERT Certified Electronic Transcriber CETD-569**

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700 West 192nd Street, Suite #607

New York, NY 10040

Date: July 16, 2012

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EXHIBIT 2

Transcript of Record at 13-16, 39-40, *In re Residential Capital LLC, et al.*, No. 12-12020 (July 3, 2013)

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 3, 2013

10:02 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

Status conference

Transcribed by: David Rutt

eScribers, LLC

700 West 192nd Street, Suite #607

New York, NY 10040

(973)406-2250

operations@escribers.net

A P P E A R A N C E S :

MORRISON & FOERSTER LLP
Attorneys for Debtors
1290 Avenue of the Americas
New York, NY 10104

BY: GARY S. LEE, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL, LLP
Attorneys for Official Creditors' Committee
1177 Avenue of the Americas
New York, NY 10036

BY: KENNETH ECKSTEIN, ESQ.

AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys for UMB Bank
One Bryant Park
New York, NY 10036

BY: DANIEL H. GOLDEN, ESQ.

WHITE & CASE LLP
Attorneys for Ad Hoc Group of Junior Unsecured Noteholders
1155 Avenue of the Americas
New York, NY 10036

BY: J. CHRISTOPHER SHORE, ESQ.

MUNGER TOLLES & OLSON
Attorneys for Berkshire Hathaway
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071

BY: THOMAS B. WALPER, ESQ. (TELEPHONICALLY)

P R O C E E D I N G S

THE COURT: All right. Please be seated.

We are in Residential Capital number 12-12020 and also in connection with two adversary proceedings, 13-01343 and 13-01277.

Mr. Lee.

MR. LEE: Good morning, Your Honor. Gary Lee from Morrison and Foerster for the debtors.

THE COURT: Let me just say before you proceed, this is on the record. Go ahead.

MR. LEE: Thank you, Your Honor. And thank you for seeing us on short notice.

Your Honor, I just want to be clear from the outset that this is not about discovery. There is a telephonic conference scheduled for next Tuesday.

THE COURT: Well, I'll tell you now, that conference is going to be in court rather than on the telephone. Mr. Walper, who is in California, can participate by telephone, but we're going to -- I want everybody here at 5 o'clock.

MR. LEE: Thank you, Your Honor.

What this is about, Your Honor, is getting Your Honor's guidance on how we should respond to the noteholders' attempts, second round, third round, to raise plan issues in the context of the adversary proceeding.

Your Honor, there are three things I want to address.

First, we think Your Honor was abundantly clear at the last status conference that the adversary proceeding related to nonplan issues. We believe, and I'll go through this in some more detail, that the noteholders ignores that direction. Second, just to cut through some of the letter writing or at least the three letters, we're not here to prejudice any confirmation objections they can conjure up. We'll be absolutely clear about that. Third, we do believe that the notion of interdebtor conflicts was revolved when Your Honor approved the plan support agreement. And if I may, Your Honor, I'd like to go through those three points in a little bit more detail.

Later today, we will be filing a plan and disclosure statement. It's a plan that has the support of creditors with claims throughout the debtor's capital structure, and we expect overwhelming support for that plan from impaired creditors at the principal debtors. The plan embodies a number of compromises, the product of Judge Peck's mediation, and one of those compromises relates to intercompany claims. For the noteholders, Your Honor, this case -- because we're paying them post -- sorry -- we're paying them par plus accrued, this case now comes down to one issue, post-petition interest and post-petition interest alone.

The reason we requested this status conference, Your Honor, is to seek some direction on how and to what extent the

noteholders are going to be able to disrupt the schedule set by Your Honor in relation to the consolidated adversary proceeding. And Your Honor suggested that we would -- should come back to the court, that we shouldn't let these sorts of issues fester, so that's why we're here.

We provided Your Honor with a copy of the junior secured noteholders' letter which comes out of a unsuccessful playbook that we've seen in other cases pending and resolved in the southern district of New York. Refer Your Honor to Charter and Adelphia.

Now, as I said, Your Honor was abundantly clear during the chambers conference on scheduling that the allowable scope of the adversary proceeding was nonplan matters. I don't know if Your Honor has seen a copy of the junior secured noteholders' counterclaims that were filed, I believe, this week -- or last week. I think they speak for themselves as to where the junior secured noteholders intend to go with the adversary proceeding. Somebody on the noteholder side decided to ignore Your Honor's direction because something like over a dozen of the declarations sought by the counterclaims relate to the global settlement that's embodied in the plan support agreement and will be embodied in the plan.

And although I don't intend to address discovery matters, and I didn't have enough time to actually go through the 247 document requests we received, I just note for the

record that ten alone go to the ability of the debtors to resolve intercompany claims. So just to give you a flavor of the counterclaims, Your Honor, ten of them seek a determination of the exact distributable value of each of the intercompany claims. That, Your Honor, is a plan issue because the intercompany claims have been settled as part of the plan.

Second, Your Honor, several more seek to subordinate the RMBS trustee claims, the monoline claims, and the securities claims. Again, Your Honor, the exact claims that are resolved as part of the plan. And there's something more to this playbook as well, Your Honor. The junior secured noteholders also objected to the FGIC settlement that resolves the FGIC and the trustee's claims. Now, they're free to do so, and we'll address that at the appropriate time, but I just, again, note for the record that that 9019 settlement addresses not the plan or the plan-related issues but rather settles nearly ten billion dollars of claims, the claims totally 596 million dollar split between two debtors. And I can't fathom why anybody would object to that.

Your Honor, we're not asking you for anything new here. Your Honor was very clear to Mr. Uzzi what the adversary proceeding will cover, and I don't think that message has come through.

The other part of the playbook, which I think was particularly disconcerting to the debtors because it came the

same day Your Honor approved the plan support agreement, is the attack on the process run by Judge Peck, the attack on Mr. Kruger and on us as counsel. And we made it very clear when we sought Judge Peck's appointment as mediator that one of the things he would mediate was going to be intercompany claims. The junior secured noteholders refused to participate in that mediation based on the rules Judge Peck set. Those are not rules that the debtor set. We also made it clear in the application to appoint Mr. Kruger as the CRO that he would assist in resolving interdebtor and intercreditor disputes and that he was vested with authority to make decisions on behalf of each debtor.

So, Your Honor, we think it's totally unfair fourteen months into this case after Your Honor approved the plan support agreement as being in the best interest of each of the debtors, after we agreed to pay the junior secured noteholders par plus accrued, after we agreed to pay post-petition interest if they prevail in the adversary for them to take this tack. I've just come back from England, Your Honor, and the expression is, "it just isn't cricket."

They can attack the transactions embodied in the plan. We've given them that right. It's been reserved. They can attack good faith at confirmation if they want to. We are not going to, nor do we believe we can prejudice their confirmation objections. What they can't do, Your Honor, is create

interdebtor conflicts or disagreements where there are none and make those part of the adversary proceeding. Again, Your Honor, that's beyond what you told them. The adversary proceeding relates to the junior secured note issues and not the plan.

So what we're asking Your Honor for is for some direction and perhaps repeat direction with respect to two matters. First, that allegations regarding conflicts have no part of the adversary proceeding. If the junior secured noteholders insist on challenging the bona fides of plan settlements under 9019, they can do so at confirmation, but the notion of interdebtor conflicts went out the window when the plan support agreement was approved.

Second, Your Honor, that issues that are at the core of the global settlement, the priority of claims, the amount of claims, the intercompany settlement, the AFI settlement allocation are exactly those things, plan issues. Your Honor said it once, but it doesn't appear to have taken. They're not part of the adversary proceeding.

Your Honor, our view is that it will defeat the entire purpose of the mediation if we have to litigate those issues outside of a plan.

THE COURT: Thank you, Mr. Lee.

MR. LEE: Thank you.

THE COURT: Mr. Shore.

MR. SHORE: Yes, Your Honor, Chris Shore from White & Case on behalf of the Ad Hoc Group.

Let me state at the outset as set forth in the letter that got sent to you either late last night or early this morning, we object to the setting on this kind of notice and on the circumstances under which it arose, and in particular now, since what Mr. Lee said is the letter which pertains to discovery issues really isn't doubt discovery issues at all but rather is an open-ended request for this Court's guidance on how to deal with issues. I'm not going to address the extraneous issues in the letter or what were said today with respect to the mediation or the discovery. We'll handle those either in the mediation or in the discovery conference unless Your Honor wants to hear from me on that.

Fundamentally, the issue in this case arises out of the debtor's very demonstrable shift in positions with respect to what they're doing with respect to interdebtor conflicts in these cases. They started out saying that it's all going to be proposed for a settlement. Then they came back and said, well, it's not being proposed for a settlement, it's being -- we've determined that they have no mathematical value. Then they came back and said, actually, what we want to do -- and this was the statement that was made on the report at the PSA hearing and in their PSA reply -- what we intend to do is to waive intercompany claims based upon a legal determination

that's been made that those claims have no merit. We had a call --

THE COURT: What they've said, I bought, was that they propose a settlement which must be approved under 9019 and plan confirmation standards that would value the intercompany claims at zero, but it's a settlement, it's not a determination -- it's -- a settlement is a compromise.

MR. SHORE: We thought as much as well, Your Honor, and that's where the problem lies. We can all have our views as to whether a plan which throws up interdebtor conflicts in the air and says you all creditors resolve it makes sense. I happen to think that it just takes the fiduciary out of the seat, but that's a process which works. That's not what the debtors are proposing, Your Honor. That's what they had proposed. And then we went to them and said first, there's a problem with a settlement like this, you're settling everything at zero, their -- please explain to us how, when you have one intercompany claim is at 2.6 billion dollars running from one debtor to another, that gets settled at zero, same with a 35 million dollar claim that runs from this debtor. They didn't have an answer to that and --

THE COURT: Well, the time -- the time for the answers to those questions will be when the Court considers the settlements -- if the Court gets to that point of considering the settlements embodied in the plan. It's not today. I

understand your views --

MR. SHORE: Um-hum.

THE COURT: -- and I understand the views of the debtor -- debtors. That's not today's issue.

MR. SHORE: I didn't -- I didn't make it today's issue, Your Honor. What they're saying is that this issue is not going to be litigated, and let me respond to that in two respects.

First, the notion that this got resolved in the PSA is contrary to everything in the record on that PSA. As we set forth in our supplemental response, the first time they said, we're seeking to waive intercompany claims because we believe they have no value, we called them up immediately -- and this is in the supplemental response -- and said, you don't really mean that, do you, that you're making a determination that these claims have no legal merit? They said, no, we're not, we're just saying that the math doesn't work, that the math doesn't provide value. That's why we filed the supplemental response.

But in that, we said we preserve all rights with respect to this, and there were statements made on the record, we're concerned that what the debtors are doing here is losing any sensitivity to the issue of how to handle interdebtor conflicts. You want to propose it for a settlement, fine, but you can't come in as an advocate and say, on behalf of one

client, these intercompany claims are good, those enter company claims are bad. You also can't say, in between the clients, this is how we think the Ally settlement should be allocated. You can't do what they want to do on another interdebtor conflict, which is how to allocate expense and push all the expense of these cases down OpCo's --

THE COURT: Are you suggesting, Mr. Lee, that the debtor unilaterally decided those issues or that those were issues that at this stage were resolved among the parties to the PSA? It's not -- this is not a debtor-only issue. The two term sheets that are attached to the PSA, which the Court has approved the PSA at least as to those parties who've signed the PSA, they've agreed to support a plan consistent with the term set forth in the two term sheets.

So I've seen nothing to suggest that those were unilateral decisions by the debtor or the CRO. Whether they get approved by the Court is a different issue, but you make it sound as if the debtor unilaterally decided how those issues would be resolved.

MR. SHORE: I --

THE COURT: It doesn't appear to the Court to be that way.

MR. SHORE: Okay. Well, then maybe we can get a -- we'll certainly get --

THE COURT: Well, just address me. Don't --

MR. SHORE: Sure.

THE COURT: Don't address questions to --

MR. SHORE: No, I'm saying I think we're going to get an answer, a definitive answer, from the debtors on how they're dealing with these intercompany claims in the context of the plan and disclosure statement that are going to be filed, which is why I didn't want to have this proceeding today. We will get the definitive view.

My point is, it sure sounds to us like what the debtors want to do, to avoid an issue that we raised with respect to adequate protection, is say the reason the settlement works and the reason the Court can approve the settlement is because the debtors have already determined, based upon Mr. Kruger's negotiation with himself, and advice by Morrison & Foerster, that all the intercompany claims are without legal merit. If that's the position they're taking, that, I think, is going to be a surprise to Your Honor and it's going to meet with questions from me, which is, how do you plan to do that, which was the purpose of the letter. We still have not gotten a response.

If Mr. Lee stands up and says there's nothing about our plan which will seek a determination from this Court that our waiver of intercompany claims in connection with the settlement was supportable by the law and by legal determination of the respective rights and obligations of our

many debtors, that's one thing. That's not what they're saying.

THE COURT: Well, I guess we can all -- you can spend your weekend reading the plan and disclosure statement.

MR. SHORE: Now, with respect to the counterclaims and the injection of issues in this case, as Your Honor pointed out on the PSA, there is no plan on file. The debtors requested, and Your Honor ordered, that we file our answer and counterclaims with respect to all issues relating to the allowance of post-petition interest. There is no --

THE COURT: Let me see if I can put this aspect of it to rest, okay? I don't view anything that this Court has done, or the order that was entered approving the PSA, or what occurred at any prior conference in the court, as limiting the JSNs as to what would be an appropriate pleading, what would be an appropriate counterclaim under applicable Federal Rules of Civil Procedure. They can and should and did assert claims that they believe are supported by the facts and the law. Whether that's true or not, we'll see. Approval of the PSA, to which the JSNs were not parties, cannot alter the JSN's rights.

With that said, however, not all issues necessarily raised by the counterclaims need to be resolved at one time. And what I've been clear about and what I want to be clear about is that I intend -- I think I referred to it as the phase one trial, the trial of the issues -- well, of issues, we'll

say, not the issues -- of issues with respect to the JSNs, the extent the issues are included within the 9019 that's going to be embodied in the plan. It seems to me that those will be heard, tried, to the extent they're contested, in the confirmation hearing.

Specifically, this issue of valuing intercompany claims at zero, it's an issue that affects many creditor constituencies, not just the JSNs. And I don't intend to hear or resolve the evidence or arguments with respect to that issue at a trial of the adversary proceedings.

To the extent that the JSNs raise issues in their counterclaims that the debtors believe -- and we'll see whether the parties can agree on this or not -- that are what the debtor describes as plan confirmation issues, they can be bifurcated from the issues that'll be tried. I mean, this is not -- I mean, the procedures are pretty clear about this. I have great discretion about what issues -- if I bifurcate here and resolve particular issues, I can do that, and I will do that. To the extent that issues raised by the JSNs are covered by the 9019, I'll go ahead and hear and decide it.

I mean, you know, the proponents of the plan -- proponents of the 9019 settlement, have a larger hurdle when the objectors are not part -- claim that a settlement is improperly affecting their rights. But certainly there is authority for a court to go ahead and approve it, unless

there's an agreement with the JSNs, and if they oppose plan confirmation, and if they oppose the global settlement with respect to intercompany claims, I'm going to have to hear the evidence and decide it as part of plan confirmation, and I will.

And to the extent they raise those issues, if properly raised -- I don't believe, Mr. Lee, that anything I've said from the bench or any order I've entered, including the order approving the PSA, has affected, substantively, the rights of the JSNs. Okay. So did they have to assert them? Is this compulsory counterclaims that they had to assert? I'm not going to get into that. I don't know. I'll tell you right now, I haven't read the most recent round of pleadings, okay? It may well be their position is that these are compulsory counterclaims and they had to assert them. And fine, so they've asserted them. Okay.

So anything else you want to add?

MR. SHORE: Yeah, let me just respond to that last piece, to make our position clear on this. We heard Your Honor loud and clear with respect to affecting rights of the others. We have offered multiple mechanisms, procedural mechanisms for handling our issues, independent of any issues that relate to the global settlement or other parties. That's just been soundly rejected. We're still trying to work through that.

Second, our counterclaims, actually, what we're trying

to do is, independent of the global settlement, there are issues that have to be resolved. For example, if they want to settle the inter -- intercompany claims are our collateral; there's no dispute about that. If they want to settle those claims at zero, they can do that --

THE COURT: Well, when you say that's part of your collateral, what I had understood your position to be is, for example, you have a pledge of the equity of various ResCap affiliates, and your position is if they have -- if they are creditors on a substantial intercompany claim, that would make -- which it paid in full or in substantial part, would make that entity solvent, such that the equity had value. You claim you have the equity as part of your collateral package. Do I understand that correctly?

MR. SHORE: That's one issue. The other issue is intercompany claims. So for example, RFC has a two billion dollar claim scheduled -- plus billion dollar claim into ResCap, LLC, which is pursuant to a notes agreement. If value flows, that is, if the 2.6 billion dollar claim is --

THE COURT: May I ask you this? Do you have a pledge specifically of that intercompany claim or --

MR. SHORE: Yes, on that one, we have various pledges that -- or sorry, various grants --

THE COURT: You have a pledge --

MR. SHORE: -- of security interests.

THE COURT: -- of a note?

MR. SHORE: We do not. We have a lien on the general intangible of RFC. If value flows on that -- and this is a stipulated lien at this point; the debtors have agreed to it and the committee is estopped, at this point, because they didn't challenge it. If value flows on that, so let's say the two billion dollar claim gets paid at ten cents on the dollar at ResCap, LLC, 200 million dollars flows, subject to our lien. What they're doing here is they're saying there are no intercompany claims.

THE COURT: Oh, I understand what they're doing --

MR. SHORE: Right.

THE COURT: -- Mr. --

MR. SHORE: So --

THE COURT: -- Mr. Shore.

MR. SHORE: So those are the counterclaims. So let's say they want to settle that claim at zero. If Your Honor determines, though, that that collateral was worth 200 million dollars, we have a diminution in value, because the debtors have disposed of the collateral of 200 million dollars.

THE COURT: Well, if I determine that there are disputed issues as to whether debt should be recharacterized as equity, for example, and they've settled that issue, I don't -- what is it that says it can't be settled without your consent or agreement?

MR. SHORE: There's nothing that says it can't be settled --

THE COURT: Right.

MR. SHORE: -- without --

THE COURT: And so what the issue for the 9019 is: Does the settlement pass muster? It may or it may not.

MR. SHORE: Right. There are two issues --

THE COURT: But that's not an issue for this phase one trial.

MR. SHORE: There are two issues there. First of all, the RFC one we understand. There are other debtors there who are not represented, even virtually, by any creditors who are part of that negotiation. So the notion that the OpCos below waive their intercompany claims into the parent, as approved by everybody who's sitting at those top levels, I think is one of the problems with the 9019. But more importantly --

THE COURT: You'll attack it; if that's what you believe --

MR. SHORE: Right.

THE COURT: -- that's what you'll -- you'll make that argument.

MR. SHORE: Even if it's settled, though, even if it's settled at zero, if Your Honor says that the claims, the particular claims had value but were settled at zero --

THE COURT: Okay.

MR. SHORE: -- as part of the --

THE COURT: Mr. Shore?

MR. SHORE: -- global compromise --

THE COURT: How can I make this any clearer? I said it at the prior hearings. This one's on the record; you can get a transcript. Okay? If you have objections to plan confirmation, if you have an objection to the settlements that will be embodied in the plan, you will file your objection, and I will hear them then. Because the issue of the interdebtor claims affects many constituencies, okay, they all have a right to be heard, either in support of the settlement or in opposition to the settlement. Okay?

MR. SHORE: And as a matter --

THE COURT: And I plan to do that as part of the plan confirmation, okay? I've said it before; it may have been on the transcript before. Some of these hearings on scheduling have not been on the record. I wanted this one on the record, okay? You can order a transcript. Okay. Anything else you want to say?

MR. SHORE: Only this. We have a procedure set in place. We have counterclaims that are filed in the adversary. They have a time to respond to those. I assume that what they're going to do, after we see the plan and disclosure statement, is move to have the Court abstain from hearing these twelve --

THE COURT: I don't think it's an abstention. It's not an abstention, I'm telling you. It may be that I will bifurcate the issues.

MR. SHORE: That may be another proposal as to how they plan on dealing with it, which is bifurcating the issues. That's fine. But we need to have some procedure that sets in place as to exactly --

THE COURT: Okay. I'm going to --

MR. SHORE: -- what's happening.

THE COURT: That is what I'm going to give some guidance about. Anything else you want to add, Mr. Shore?

MR. SHORE: Nothing, Your Honor.

THE COURT: All right. Anybody else want to be heard? Mr. Golden?

MR. GOLDEN: Your Honor, UMB, as the indenture trustee for all the junior secured noteholders, has heard the Court loud and clear. We understand, always understood, that it was the intention of this Court to handle the settlement of the intercompany claims as part of the global settlement in connection with the plan process. We don't have a problem with that, per se. But the debtor, in its adversary proceeding, in its amended adversary proceeding, specifically Count 5 of that adversary proceeding, puts into direct issue those intercompany claims. Count 5, paraphrasing, says they want a declaration that the junior secured noteholders are undersecured.

Everybody here understands undersecured; the value of the collateral is less than the amount of the claim.

Now, leaving aside the shaky legal proposition that they're asserting, and we'll get to that in due course, that claim, that count requires the junior secured noteholders and UMB, as the fiduciary, to defend against that. It is nobody -- it's not going to come as a surprise to anybody that a large part of the collateral that the junior secured noteholders assert they had are the intercompany claims. And --

THE COURT: You don't have a pledge of the intercompany claims, do you?

MR. GOLDEN: Your --

THE COURT: Show me a piece of paper that says you have a -- that your collateral specifically includes the intercompany claims. I've never understood that to be the case. You may -- Mr. Shore raises an issue about a pledge of intangibles. It may cover it; it may not cover. Those as to which you have a pledge of the equity of subsidiaries or affiliates, if they're solvent, if the intercompany -- if payment on the intercompany claims would mean they're solvent, then there's value for you if you have a pledge of the equity.

But do you have a piece of paper that is a pledge of a note or another piece of paper that reflects an intercompany claim?

MR. GOLDEN: As Mr. Shore explained, Your Honor, we

don't. But it is --

THE COURT: Okay.

MR. GOLDEN: But it is our position --

THE COURT: I understand your position --

MR. GOLDEN: Okay.

THE COURT: -- Mr. Golden.

MR. GOLDEN: So having that as our position, we need to defend against Count V which says we're undersecured.

THE COURT: And the -- well, my understanding is they claim you're undersecured, for a whole variety of reasons. And it may be that, in trying this first phase and this -- the adversary, all issues aren't going to be resolved, because I understand your point about if intercompany claims are not valued at zero, you believe that that's enough for you to win. And it may be that -- say RFC -- what, two billion dollars, same intercompany claim -- I don't know what the -- what creditor claims have been filed against RFC.

I mean, you may be able to deal with this issue -- we'll talk a little bit about discovery and trial even at confirmation -- with a rifle shot and not a blunderbuss. If you pick -- if you think that you've got -- that there are three of the intercompany claims that you believe beyond question are what they purport to be and there's no basis to settle them at zero, you'll focus on those at trial and not have to go through fifty-one affiliates and -- I'm not going to

tell you right now -- I may tell you later but I'm not going to tell you right now how the trial ought to proceed. Okay. But what I am telling everybody -- and so -- look, you raise the issue in counterclaims that -- and look, I'm telling you, I didn't read them yet, okay? I will, okay? But I haven't read -- I got a lot going on. I haven't read the latest round of pleadings, okay? I will take you at your word and, I think, Mr. Shore's word, that you've raised issues in counterclaims. And again, I don't know whether they're compulsory or not. I don't get particularly excited that you raised issues in the counterclaims, that are going to ultimately get resolved as part of a plan confirmation trial rather than this trial, okay?

What I want to avoid is -- if possible, is injecting issues into this first trial that are going to necessarily bring to the table every other creditor constituency, because these are issues that apply across the board and not unique to you. The same applies to the debtor: If they amended their complaint and they added a Count V that you believe -- just a count to say -- determine that you're undersecured, I don't think is the problem, Mr. Golden. It may be, if there are three reasons they think that certain collateral isn't part of your collateral package, for example -- I don't see what prevents the Court from resolving that issue, okay?

MR. GOLDEN: But they haven't pled it that way, Your Honor.

THE COURT: Well --

MR. GOLDEN: That's how the committee --

THE COURT: Good, and you didn't plead your counterclaims in such a way as to exclude from the trial -- the first-phase trial of the adversary proceedings, a range of issues. That's fine. Okay. I -- we'll deal with it. I understand your point.

Anything else? Any other point you have, Mr. Golden?

MR. GOLDEN: Well, Your Honor, I do want to point out that, while we understand the process, we understand the procedures, this is asking the JSNs basically to defend against the debtor's lawsuit with its left hand tied behind its back.

If you allow me to continue, Your Honor.

We think -- I know it's a matter of dispute; we've laid it out -- that we have a claim on the intercompany claims.

THE COURT: And you'll get a chance --

MR. GOLDEN: I --

THE COURT: Can you -- are you listening --

MR. GOLDEN: I am.

THE COURT: -- at all?

MR. GOLDEN: Your Honor --

THE COURT: Are you listening?

MR. GOLDEN: Your Honor, I am.

THE COURT: You'll get your chance to raise that issue.

MR. GOLDEN: I appreciate that, Your Honor. I'm --

THE COURT: You're not going to get a chance to raise it in this phase-one trial, Mr. Golden.

MR. GOLDEN: I understand that, Your Honor. What I wanted to point out is, if this was simply in a vacuum an adversary proceeding brought by the debtors to determine whether we're undersecured or not, we would assert all of our defenses and there'd be a certain burden of proof on both sides. Having manipulated the process --

THE COURT: Oh, come on --

MR. GOLDEN: Your Honor, can I --

THE COURT: -- Mr. Golden, spare me.

MR. GOLDEN: Okay. Your Honor, the 9019 has a much different, as the Court is well aware, burden of proof --

THE COURT: Yes, and if they get it approved, then you're going to come out on the short end, and what can I tell you? We'll deal with that when I get to decide whether the 9019 gets approved. You don't try the merits of the issues on a 9019. Okay, you don't have a mini-trial. The law in the Second Circuit is quite clear on that. There's a very different standard. You may not like it; that's the standard.

MR. GOLDEN: That's fine, Your Honor, and we are well aware of that. But, for example, Your Honor, if we claimed we had a truck as a piece of our collateral, and the debtor said, as part of their plan process, they've determined, as a

settlement, that there is no value in that truck --

THE COURT: You don't have a pledge. You told me already you do not have a pledge of a note that reflects an intercompany claim. Okay? You can't tie the hands of the debtor in resolving all issues that relate to disputed issues between all creditor constituencies and among all debtors. You may not like that, but that's the way it goes, Mr. Golden. You'll make those arguments at the time of plan confirmation, and you may prevail on it and you may not. The debtors have -- the debtors are going to have a hard time -- a harder time when it comes to a contested confirmation hearing over approval of plan -- of settlements incorporated in the plan, as to which you're not consenting creditors. But I'll deal with it then.

Anything else at this point?

MR. GOLDEN: No, sir.

THE COURT: Anybody else wish to be heard? Mr. Eckstein.

MR. ECKSTEIN: Your Honor, good morning. Kenneth Eckstein on behalf of the creditors' committee. I don't think there's a lot more to say. I think the process, Your Honor, as confirmed, is the process that we had understood was the way to proceed. I think we need to make sure we appreciate that there are many issues that we hear from the JSNs are -- need to be resolved; and they believe, if they're resolved, it will demonstrate that they were oversecured. And I believe that the

adversary proceeding that's scheduled to be tried in October is intended to deal with several issues, that have nothing to do with intercompany claims, that we agree should be resolved. And as we have said time and again, the plan will provide that, in the event the Court rules that they are oversecured based upon their theory, the plan will provide for them to receive post-petition interest.

We wholeheartedly believe that the resolution of the intercompany claims is not being done in a vacuum. The resolution of the intercompany claims is being done in the context of a global plan that pays the JSNs in full, in cash, on the effective date of their pre-petition claim. That's very important because what will become clear, I believe, at the October trial is that, separate and apart from the AFI settlement, all the other assets of the estate, even if the JSNs' views of intercompany claims were given complete credit the way they view them, the JSNs ultimately would not be oversecured. But that's something the Court can hear, and we can arm-wrestle over even that in connection with the trial.

But the resolution of the intercompany claims in the plan, as the plan, the disclosure statement and the PSA all lay out, is being done in the context of a resolution of a myriad of issues in this case, including subs, the consolidation, including the litigations over waivers of billions of dollars of claims -- of intercompany claims that were on the books and

have now been expunged, and all of the litigations that would have to get dealt with absent the global settlement.

And the question will be whether or not -- in the context of the plan where the JSNs are being paid in full their entire pre-petition debt plus accrued pre-petition interest, is the resolution reasonable. And that's something that the Court can determine in connection with confirmation. And if we can't resolve the matter between now and confirmation -- needless to say, a contested confirmation is difficult, and -- but there's no other way to deal with it; either we're going to resolve the issues or we're going to deal with them at confirmation.

But I think it's important to make clear, number one, that we're not going to litigate the intercompany claim dispute in connection with the adversary proceeding, which I think that is clear, and number two, we think it is important to confirm that we're not going to have to constantly shadowbox with suggestions that there are conflicts and that the debtor can't proceed and the debtor's counsel can't proceed to deal with confirmation. That was a suggestion that was raised in the correspondence and, as I understood it, that's what provoked in part the need for the conference was to eliminate the suggestion that somehow there is a conflict that is overhanging the debtor's ability to proceed.

The reality is, the PSA, as the JSNs know, has the support of the constituencies of every debtor. We expect, and

the plan contemplates, that the plan will have the support of all of the unsecured creditors of each of the debtors. And the JSNs are being paid in full. This is a case where there are no debtor conflicts; and to suggest them, we think, is injecting an improper --

THE COURT: Well, if the --

MR. ECKSTEIN: -- issue.

THE COURT: -- if the JSNs are entitled to post-petition interest, they're not being paid in full.

MR. ECKSTEIN: But --

THE COURT: Okay, so we'll --

MR. ECKSTEIN: And that'll be provided for.

THE COURT: -- the Court'll decide it.

MR. ECKSTEIN: And that'll be provided for.

THE COURT: Okay. All right.

MR. ECKSTEIN: But I think that's what we just --

THE COURT: All right.

MR. ECKSTEIN: -- wanted to clarify.

THE COURT: Anything else -- anybody else want to be heard?

MR. ECKSTEIN: Thank you, Your Honor.

THE COURT: Mr. Walper, do you want to be heard? You got up early for this. Mr. Walper, are you on the phone?

MR. WALPER: Yes, I am, Your Honor. And I have nothing to addl. And thank you for your time.

THE COURT: Okay. Mr. Shore, briefly.

MR. SHORE: Just hopefully something constructive, Your Honor. We'll make a proposal for the debtors to deal with the phase-one case --

THE COURT: I'm going to give you some very specific instructions about how we're going to proceed.

MR. SHORE: Very good, Your Honor.

THE COURT: Okay? All right, the Court has reviewed: the June 26th letter from Mr. Shore to Mr. Lee; the June 2nd letter from Mr. Lee to the Court that attached the June 26 letter; and the July letter from Mr. Shore to the Court. First, I don't intend to resolve any discovery disputes during this conference. During this conference, which is on the record -- I want -- I have explored briefly each side's view about the issues that should be addressed in the phase-one trial of the two adversary proceedings, and what should be addressed during the plan confirmation hearing. As I said before, I haven't had an opportunity to review the latest round of pleadings yet.

What I previously stated at other hearings, and I don't know whether there was a transcript, is that the phase-one trial should deal with issues specific to the junior secured noteholders, while the confirmation trial should address issues relating to all creditor constituencies, including the issues arising from the proposed global

settlement in the plan term sheet but not yet reflected in the plan, which is supposed to be filed this afternoon. That's my desire about how to proceed. And I understand the devil may be in the details. Also because of the compressed time frame in which all this is occurring, I want to avoid duplication of discovery in connection with the phase-one trial and the confirmation hearing.

All right. The proposed global settlement included in the plan term sheets will have to satisfy the Rule 9019 standards for approval of settlements as well as plan confirmation standards. In connection with approval of a 9019 settlement, the Court does not try the merits of the issues that have been settled. As a result, the discovery in connection with a 9019 motion should not involve the same scope of discovery as if issues were being tried on the merits. Since no plan has yet been filed, it's premature to address the details of the discovery plan in connection with a contested plan confirmation hearing; that'll have to be addressed in the first instance by the parties and, to the extent they can't agree, by the Court.

With respect to a discovery plan for the adversary proceedings, the parties need promptly to address a proposed discovery plan to present to the Court. I've already set forth a schedule in the case management and scheduling order that's been entered. In connection with the discovery plan, I want

the parties to negotiate -- this is -- and there're two things I'm going to want from you all: I want you to negotiate a statement of the issues to be adjudicated in the phase-one trial. The issues for the phase-one trial should be issues specific to the issues with the junior secured noteholders. The interdebtor claims, as I said, will be part of the plan confirmation hearing.

To the extent the parties cannot agree on a statement of issues for the phase-one trial, the parties need to submit counterstatements. Additionally, to the extent the parties can't agree on a discovery plan for phase one, the parties should submit proposed counterplans. All plans should be consistent with the time schedule set forth in the Court's prior case management order. The fact that issues have been raised by counterclaims does not mean the issues will be part of the phase-one trial. I can bifurcate, okay? Whether all the counterclaims had to be asserted now, I don't know. Okay? They have been asserted. That doesn't particularly trouble me. The fact the debtors amended the adversary complaint to add additional claims doesn't particularly trouble me. It doesn't mean that those issues all get resolved as part of this phase-one trial.

So you need, in the first instance, to try and agree -- and I think this is where you were headed, Mr. Shore -- to try and agree on the statement of the issues

that are going to be resolved as part -- addressed and resolved as part of the phase-one trial. And if you can't agree, you'll submit counterstatements and I'll decide what's going to be heard, so everybody's on the same page.

Okay. I want to impose a deadline for submitting the statement of issues and a discovery plan. Rather than simply picking a date -- and I have but I'm not going to give it -- I want you to try and do that. I'm mindful of the fact we're on a compressed time frame for the whole case. This is the 4th of July Weekend. But in the first instance, why don't you see if you can agree on when you can sit down, exchange drafts, see if you can resolve the statement of issues.

Okay. Now, with respect to the exchange of views in the correspondence regarding alleged conflicts, I don't intend to address the issues in the absence of any properly filed motions. But I find the length and tone of the correspondence I've been receiving troubling. I don't intend to allow the progress of this case to be slowed down by the exchange of six-page single-spaced letters. Issues in this case will be resolved on the merits. I don't intend to permit any party to create a smokescreen or a sideshow that detracts from resolving the issues in the case. If any party believes that counsel or professionals should be disqualified or recused in whole or in part, the parties will either resolve the issues consensually now, or raise the issues with the Court in a properly filed

motion. Because of the compressed time schedule, I'm prepared to hear such motion on shortened notice.

If you sleep on your rights, you're going to lose those rights. I don't plan to allow this issue to fester in the case. So if you're going to raise them, Mr. Shore, you better -- you've raised them already but, if you're going to -- if you really think that I should enter an order that recuses, in whole or in part, the debtor's counsel or the CRO who was appointed as an independent fiduciary not beholden to the creditors of any particular one of the fifty-one debtors, go ahead and make your motion, and do it quickly. And those who are opposing it will respond.

The fact of the matter is that the proposed plan is not solely being proposed by the debtors; it's also being proposed by the committee. And I know you've taken your potshots at the committee as well, Mr. Shore, in your correspondence, but there are lots of creditor constituencies, lots of folks who've signed on to the PSA reflecting many different constituencies.

But, okay, the sniping has got to stop, okay? As far as I'm concerned, for now, the debtor, it's business as usual, Mr. Lee, for Mr. Kruger and Morrison & Foerster. If the junior secured noteholders' counsel -- the ad hoc committee's counsel is going to raise this issue, they better do it soon.

With respect to issues concerning the mediation,

including the scope and content of any confidentiality agreement order, as I've said before, this is a matter properly raised with Judge Peck. I will not enter any order in connection with the mediation that is not in form and substance acceptable to him. All right? I indicated at the last conference that I wanted to be able to speak with Judge Peck regarding the proposed confidentiality order, the so-called VITRA order that was submitted. I had a brief conversation with Judge Peck about it; he made his views quite clear, and I know he did so in the e-mail response that he -- I think was circulated to all of you.

So I said, when I first appointed him as the mediator, I was leaving those issues to him. And I believe, as a judge sitting on this court, he's perfectly approp -- he is the appropriate one to decide what confidentiality order should be entered in connection with the mediation. I know in Mr. Shore's reply from last night that he at least addresses that some of the holders are -- of the junior secured notes, are apparently prepared to participate in the mediation even if it restricts their ability to trade. I'm not getting involved in the issues regarding the mediation. Judge Peck is able and willing to continue his role as a mediator. A lot's been accomplished. Much more remains to be done.

Okay. The only other thing I said is that the conference on the 9th, instead of being on the phone, I want it

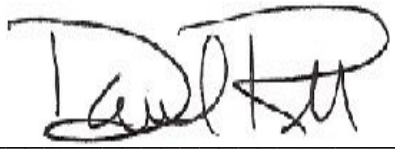
here. Ordinarily, as you know, I do discovery conferences on the phone. Hopefully you will all resolve the discovery disputes before then; today was not the time to do it. But I did want to address the issues about -- to make clear what the phase-one trial should encompass and what should be encompassed within the confirmation hearing.

We're adjourned.

(Whereupon these proceedings were concluded at 10:51 AM)

C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true and accurate record of the proceedings.



DAVID RUTT

AAERT Certified Electronic Transcriber CETD-635**

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: July 3, 2013

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